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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 BRIAN HAWKS,

4 Plaintiff,

New York, N.Y.

5 v.

09 Civ. 9923 (RMB)

6 C. GUNSETT, D. MAZELLA, E.
7 CRUZ, C. GRAVELINE,

8 Defendants.

-----x

9 July 23, 2013

10 9:15 a.m.

11 Before:

12 HON. RICHARD M. BERMAN,

13 District Judge

14 APPEARANCES

15 LITTLER MENDELSON

Attorneys for Plaintiff

16 BY: IVAN R. NOVICH

LAUREN J. MARCUS

17 ERIC T. SCHNEIDERMAN

18 Attorney General of the State of New York

19 BY: MARY KIM

JASON CLARK

20 Assistant Attorneys General

21 (In open court; jury not present)

22 THE COURT: I have a few administrative things
23 particularly relating to the exhibits. First is that I have
24 asked counsel for both sides to prepare exhibit books not only
25 for me but for the jurors as well. I don't know if that

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1 happened, but I am just thinking back to yesterday and I don't
2 think anybody gave any of the jurors any of these exhibits. I
3 don't know if that has happened. I haven't seen any jurors
4 with exhibit books.

5 Now, point two, that might be a good thing because the
6 exhibit books contain exhibits that I had specifically excluded
7 based on motions in limine so I don't understand exactly why
8 they are in the exhibit books in the first place. As plaintiff
9 exhibits there are the -- well, I didn't know whose they are.
10 The report and recommendation is in there and the so-called
11 misbehavior reports and I have, as I said specifically ruled,
12 that that was not coming in as evidence. I am totally confused
13 as to what you are all trying to accomplish here.

14 MR. NOVICH: Sorry, Judge. I prepared the jury book.
15 I got limited resources here of what I can and cannot do.
16 What I would propose is that I will get together with Ms. Kim
17 and Mr. Clark at the end of the trial and we'll pare down that
18 exhibit book to the exact exhibits that your Honor said were
19 admissible and were actually moved into exhibits and we can
20 provide that. I have all sorts of extra copies. If we want to
21 get it to the jury at that time, we can give it to them at the
22 end.

23 THE COURT: We usually give it to them during the
24 trial so it helps them. I am amenable to either way, but I
25 wanted the books to be accurate, number one.

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1 MR. NOVICH: Sure.

2 THE COURT: If you can get together since we don't
3 have all the jurors right now and we can get that straightened
4 out.

5 Second, I had made a comment yesterday during the
6 plaintiff's introduction of some of the photos, which is found
7 in the book at I think Plaintiff's Exhibit 6, and I didn't want
8 to say it in front of the jury, but the exhibit itself, that is
9 to say Plaintiff's Exhibit 6, once again which is prepared by
10 the plaintiff, has more photos than you showed to the jury. I
11 am a little concerned that that is misleading because the
12 photos that you didn't show one could conclude that
13 Mr. Hawks -- well, they round out the picture of what Mr. Hawks
14 looked like on the day that these photos were taken. So by
15 cherry-picking somewhat is Plaintiff's Exhibit 6, I am not sure
16 that that is fair and gives the jury a balanced picture so to
17 speak and so I don't know.

18 Are you, Ms. Kim, planning to introduce the other
19 photos as part of your cross-examination?

20 MS. KIM: I could do that, your Honor.

21 THE COURT: I don't want to tell you how to run your
22 trial. I am just saying there are other photos that round out
23 the picture. So if plaintiff is in fact producing its
24 Plaintiff's Exhibit 6, it seems to be it should be the whole
25 exhibit. Again, I am not telling the lawyers how to run their

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1 trial. You have to figure that out for yourselves.

2 MS. KIM: Your Honor, the reason we haven't made
3 binders for the --

4 THE COURT: What about this issue?

5 MS. KIM: I can certainly introduce them.

6 THE COURT: Well, I am not telling you to do it. I am
7 just pointing out something. Do you want to introduce them
8 yourselves, Mr. Novich?

9 MR. NOVICH: Well, I have no problem, your Honor, if
10 your Honor is more comfortable seeing all the photos.

11 THE COURT: Well, it is an agreed to exhibit, both by
12 the defense and the plaintiff, and it consists of however many
13 photos. You moved some of them in again. I think that doesn't
14 tell the jury the full picture of the photos.

15 MR. NOVICH: I have no problem with that, your Honor.
16 If your Honor wants all P 6 to go back to the jury, that's
17 fine. It is a nonissue.

18 THE COURT: There you go.

19 In part of your exam you feel you want to refer to
20 them or introduce them, you can do that too, Ms. Kim.

21 MS. KIM: Yes, your Honor.

22 Anything else?

23 THE COURT: We're still waiting for all the jurors to
24 show up. Thank you.

25 MR. NOVICH: My understanding, Judge, is we're going

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1 to finish with Mr. Hawks and then we're going to proceed taking
2 out of turn nurse Davis.

3 THE COURT: That's fine. Did you want to take a break
4 in between Mr. Hawks and the next witness?

5 MR. NOVICH: I don't need to.

6 THE COURT: In the sense of you want the jury removed
7 at that point?

8 MR. NOVICH: The only reason I did that, your Honor,
9 is because --

10 THE COURT: I am asking. These are not trick
11 questions.

12 MR. NOVICH: I will defer to whatever the marshals
13 protocol is. If they say that the they have to escort him
14 off --

15 THE COURT: It's understood and he said himself and we
16 all know that Mr. Hawks is incarcerated. This is standard
17 procedure.

18 MR. NOVICH: I'm fine with that, Judge.

19 THE COURT: Is that okay with you, Mr. Hawks?

20 MR. HAWKS: That's fine, your Honor.

21 THE COURT: We're going to call the jury in now.

22 (In open court; jury present)

23 THE COURT: Please be seated, everybody. We'll
24 continue with the cross-examination of Mr. Hawks.

25 THE DEPUTY CLERK: Sir, before we begin I would like

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1 to remind you that you are still under oath.

2 THE WITNESS: Yes.

3 THE DEPUTY CLERK: Thank you.

4 MS. KIM: Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MS. KIM:

7 Q. Good morning, Mr. Hawks.

8 A. Good morning.

9 THE COURT: Will you pull that microphone down a
10 little bit, Ms. Kim.

11 Q. When we broke yesterday there was an open question and the
12 question was: Before this November 1st, 2007 incident started,
13 when you claim that Officer Gunsett suddenly punched you,
14 Officer Gunsett didn't say anything to you other than, Put your
15 hands back in your pockets; correct?

16 A. I -- I can't remember. It's been a while since we had that
17 incident. He did mention something about my hands. I can't
18 remember exactly everything verbatim. It's been six years.
19 So, you know, I need a little refreshing.

20 Q. Other than Officer Gunsett saying something about your
21 hands before as you claim he suddenly punched you, he didn't
22 say anything else?

23 THE COURT: He said he couldn't remember.

24 A. Yeah. Thank you. I don't recall. It's been a while. I
25 have been through a lot since then.

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Hawks - cross

1 Q. Maybe I can refresh your recollection with your deposition
2 testimony; all right?

3 A. Yes, you can do that.

4 Q. Page 43, starting at line 24:

5 "Q. Did he say anything to you before he swung at you, meaning
6 Officer Gunsett?

7 "A. No. He didn't have nothing to say. If he did, what was
8 it for him to say? What did you have to say? If a person is
9 ready to fight, he is not going to do any talking. He is going
10 to do what he got to do."

11 Do you recall giving that answer, Mr. Hawks?

12 A. Yes. I recollect saying something like that.

13 Q. So he didn't say anything threatening to you; isn't that
14 right?

15 A. I didn't tell you that is a threat.

16 Q. Now, by the time of this November 1st, 2007 incident, you
17 had a cast on your left wrist for about two months and a week;
18 right?

19 A. I don't -- I don't know. Can't recall. I don't know when
20 the cast was on. It was on for a while. I don't know if it
21 was two months or three months. It was on there for a while.

22 Q. Well, you got the cast on when you fractured your wrist on
23 August 25th, 2007; correct?

24 A. I don't recall exactly how long the cast was on.

25 Q. Isn't it true that your cast was completely removed that

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Hawks - cross

1 day before this incident happened on November 1st, 2007?

2 A. I have no recollection.

3 Q. Now, Mr. Hawks, is it true that all inmates must follow a
4 set of rules called the Standards of Inmate Behavior?

5 A. They do give us an All Inmates Rules Book. It does have
6 standards and rules inside the rule book.

7 Q. Isn't it true when an inmate breaks any of those rules, he
8 is issued what is called a misbehavior report that lists the
9 infractions against the inmate?

10 A. It's true that they have the -- stipulates a lot of rules.
11 There are so many rules inside that book. Does all inmates
12 follow all those rule? I always have to say no. But do I
13 follow all the rules? I think I would have to say yes because
14 I am very, very careful. I have been in the system for a long
15 time so I know that if certain rules you don't follow, they can
16 end up into a result, the results can be bad or it can be good.
17 I always have to say I follow all rules.

18 Q. Mr. Hawks, how long have you been in prison?

19 A. Since '04.

20 Q. You always follow the rules since '04?

21 A. The tough ones, I do.

22 THE COURT: The what?

23 THE WITNESS: The tough ones.

24 A. The ones that specifies no bodily harm to others or staff
25 members, that will be the number one that I keep in the back of

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Hawks - cross

1 my mind. Miscellaneous rules and different things, as far as
2 out of place, stuff like that, I get caught up now and then not
3 having any ID. Sometimes I rush and put my ID in the wrong
4 place. I might misplace it on the bed or I might have it
5 someplace laying down on the floor. It depends on my day. It
6 depends on how my day is going.

7 Q. What other rules have you violated while you were in
8 prison?

9 A. Like I said out of place. I get out of place tickets,
10 rules, violations.

11 THE COURT: What does that mean, out of place?

12 THE WITNESS: Out of place, it is like being somewhere
13 where you are not supposed to be inside the facility, inside
14 the correction area.

15 Q. Any other rules?

16 A. That's the only ones that I always get accused of and I
17 always get altercation with staff. We don't see eye to eye all
18 the time. Sometimes I find myself debating, arguing with the
19 officers. Sometimes it can lead to something and sometimes,
20 you know, it can just be a result right then and there. It
21 depends on both of the parties.

22 Q. Mr. Hawks, have you ever received a ticket for an
23 unhygienic act?

24 A. Well, unhygienic act.

25 Q. Yes.

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Hawks - cross

1 MR. NOVICH: Overruled.

2 A. Yes, I have, and I can tell you what does it consist of and
3 what happened in that unhygienic act. This was in
4 October 27th, 2008. I was in Southport Correctional Facility.
5 It is a lockdown facility. It is a disciplinary jail. I do
6 recall being in my cell waiting for medical -- a medical run.
7 The nurse came by and was supposed to have gave me some
8 assistance about my meds because a guy has to sign up for that.
9 I had some kind of problem with not getting my meds so I had
10 wanted to get my meds that day asked one of the porters to tell
11 the officer to go and inform the officer about that I needed my
12 meds. It's a porter that comes out that helps run the floor.
13 He assists people with certain things that they need. So I
14 told the guy could he address the aid officer and mention to
15 him that I didn't get my medication. He went to go do that but
16 I never got a response.

17 So I had -- I waited until a chaplain had walked -- a
18 female chaplain by the name of Chaplain Stanley. She came --
19 she always come to talk to the prisoner, the guys, inmates.
20 And I stopped her when she got near my cell and I asked her
21 could she inform one of the sergeants or supervisors that I
22 need medication and I didn't get fed on that particular day. I
23 had a problem with getting my meals for some reason and staff
24 ignored the request and I had threw up my vomit fluid in a cup.
25 I had two big cups I was throwing up. I handed the two cups to

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Hawks - cross

1 Chaplain Stanley, which is the chaplain. That is when I was
2 written up misbehavior or unhygienic act.

3 It would be viewed as a violent act if you throw it on
4 somebody or if you use it as a weapon. I didn't use it as a
5 weapon. I used it to get help. I passed it to the chaplain
6 saying, Could you show this to the sergeant and that is what
7 she did. She had a cart. She was wheeling the cart and she
8 carries magazines, Christianity literature and stuff like that.
9 She passes it out. That is what she was on the company for, on
10 the unit.

11 THE COURT: Okay. Go ahead.

12 Q. Mr. Hawks --

13 A. That is what that unhygienic was about.

14 Q. -- in fact you handed the chaplain a cup of your feces;
15 correct?

16 A. Un-correct. Vomit fluid. It wasn't body fluid, feces.
17 That is what they put in the misbehavior report to make the
18 ticket stick, to make me look like I did something wrong.

19 Q. Now, have you ever been charged with anything in any
20 misbehavior report where you actually did something wrong?

21 A. Only thing I can think of is that I didn't have any ID
22 card. If you want to say that is wrong, you know, that's a
23 person's opinion. Anything defined me putting my hand on
24 anybody, no. I am not that kind of person. You know, real
25 humble when I am around people. I treat people with respect

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Hawks - cross

1 and I want it in return.

2 Q. Mr. Hawks, in August of 2006 you had an incident for which
3 you received a misbehavior report for counterfeit; right?

4 A. I believe we went over this yesterday if I am not mistaken.
5 Could you describe what counterfeit is?

6 Q. Isn't it true that if an officer found you out of place and
7 you gave him a false call-out, a paper that is called a
8 call-out?

9 A. Okay. I know where you are going with this. I had the
10 wrong call-out in my pocket. I grabbed -- I always hold on to
11 my call-outs. I don't destroy them. Some inmates destroy
12 their call-outs. I am one guy that holds onto all my
13 call-outs. What happened that day is I left the original
14 call-out, the one that had the right date on it, and I grabbed
15 the call-out that that had the wrong date on it.

16 Q. Mr. Hawks, is it true that thus far you have had at least
17 12 instances where you received a misbehavior report for either
18 a Tier 2 or Tier 3 infraction?

19 A. I received a lot of tickets, yes. Was it by choice, I
20 don't have any control over that what the officers want to
21 write a ticket or not. Some officers just write tickets just
22 to pass time. You know, I think that is wrong. That is
23 abusing their authority. It happens in hostile environments
24 where I am doing my time out. I am in a maximum security. So
25 we got a lot of things that go on in maximum security all the

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Hawks - cross

1 time. It is not just me. A lot of people get tickets. I am
2 not the only guy to get tickets.

3 Q. You never did anything to deserve any tickets?

4 A. I am not going to say -- no. I am going to be honest. I
5 don't feel I deserve to get a ticket and pay \$5 out of my
6 pocket. No, I don't deserve that.

7 Q. Let me explain something to the jury, Mr. Hawks, you are
8 familiar with the prison disciplinary system?

9 A. Am I familiar with it?

10 Q. Yes.

11 A. In what content?

12 Q. When you get a ticket there, they are hearings deemed Tier
13 1, Tier 2 or Tier 3?

14 A. Yes. Tier 3 is the highest ticket you can receive.

15 Q. Tier 3 is the most serious, tier 1 is not so serious, and
16 Tier 2 is something in the middle?

17 A. It is a give and take because Tier 3 don't necessarily have
18 to be a bad ticket. It is just because they put a Tier 3 on
19 it. It depends how the officer writes it up. The officer can
20 add on his own version what he want to put in the ticket. So
21 it is up to the discretion of the hearing officer who it goes
22 in front of which would be a lieutenant. The lieutenant gets
23 the last decision and the final result whether or not he is
24 going to determine that ticket.

25 Q. Let's move on, Mr. Hawks.

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Hawks - cross

1 Now, isn't it true that you received a misbehavior
2 report for an incident that occurred on January 2, 2005, at
3 Attica Correctional Facility charging you with assaulting
4 staff, engaging in violent conduct, and disobeying a direct
5 order?

6 A. I can -- I can give you some feedback on that.

7 Q. It is a yes or no question. Did you receive a ticket on
8 January 2nd, 2005 at Attica Correctional Facility charging you
9 with assaulting staff engaging in violent conduct and
10 disobeying a direct order, yes or no?

11 A. My answer is no. If you want an explanation behind it, I
12 can give you an explanation.

13 Q. I am not asking you if you assaulted staff. I am asking
14 you did you receive a misbehavior report for assaulting staff?

15 A. Yes. I was charged with a ticket pertaining to an assault.
16 Yes, ma'am, if that is what you want to hear.

17 Q. Isn't it true that on that day, January 2, 2005 at Attica
18 Correctional Facility, you were moving from one cellblock to
19 another and Officer Mariani escorting you during the move?

20 A. Absolutely not. Nobody escorted me anywhere. What
21 happened was they --

22 Q. It is a yes or no. Were you being moved from --

23 MR. NOVICH: Objection, your Honor.

24 THE COURT: Overruled.

25 A. I am going to answer the best way I know how. I can't

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Hawks - cross

1 answer the way you want me to answer. I can only answer it the
2 way it happened.

3 THE COURT: For now she is just asking you if you were
4 being moved from one place to another at that time.

5 A. I -- I was -- I wasn't being moved by officer. She stated
6 that did Mariani move me if that is what she asked me, your
7 Honor.

8 THE COURT: Were you moving though?

9 THE WITNESS: I was told to be moved, yes.

10 THE COURT: Got it.

11 THE WITNESS: That's a yes answer.

12 THE COURT: Okay.

13 BY MS. KIM:

14 Q. So when you and Officer Mariani -- is that is a female
15 officer?

16 A. No. He is a male officer.

17 Q. So when you an Officer Mariani were in the lobby of the
18 housing block from which you were moving, you tried to leave
19 that officer and go back upstairs to the second floor without
20 permission; correct?

21 A. Incorrect.

22 Q. Well, then Officer Mariani told you to stop. He gave you a
23 direct order to stop and you turned around and punched Officer
24 Mariani in the jaw; is that true?

25 A. That is not true.

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Hawks - cross

1 Q. Now, Mr. Hawks, after you received a misbehavior report,
2 you get what is called a tier hearing, right?

3 A. Yes. Tier hearing.

4 Q. That's a hearing that occurs in the prison and it is
5 conducted by a hearing officer; right?

6 A. Yes, ma'am.

7 Q. You don't leave the prison to have this hearing; right?

8 A. I don't leave the what?

9 Q. You don't leave --

10 THE COURT: She is asking you if the hearing happens
11 right there in the prison.

12 A. Oh, yes. It happens in the facility. Yes, ma'am. Excuse
13 me. I didn't understand the question.

14 Q. Sure. Any time you don't understand a question, just let
15 me know.

16 Now, when you have what is called a Tier 3 hearing,
17 you have given the right to call witnesses in your defense;
18 right?

19 A. Yeah. That's true.

20 Q. You get to testify during that hearing; correct?

21 A. That's correct.

22 Q. And you get assistance from another inmate or other inmates
23 to help you gather your defense; right?

24 A. Not all the time.

25 Q. Well --

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Hawks - cross

1 A. Sometimes.

2 Q. -- you have a right to assistance; right?

3 A. You have a right to assistance, yes.

4 Q. And you also get assistance from the Corrections staff
5 members to help you gather your defense; right?

6 A. That's if you want assistance.

7 Q. You have the right to that; right?

8 A. Yeah.

9 Q. You are allowed to present documents at that hearing to
10 defend yourself; right?

11 A. Yes.

12 Q. You can call eyewitness; right?

13 A. You can if you choose.

14 Q. You can ask the witnesses questions although you have to
15 ask through a hearing officer; right?

16 A. Yes. You have to -- you have to go through the hearing
17 officer before you go through the witness.

18 Q. Is it fair to say that the reason they do that is they
19 don't want arguments between the inmate having a disciplinary
20 hearing and the witnesses sitting in the room testifying?

21 MR. NOVICH: Objection.

22 THE COURT: Sustained.

23 A. Well --

24 THE COURT: If I say "sustained," you don't answer.

25 THE WITNESS: Okay. I didn't know that. I won't

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Hawks - cross

1 answer that.

2 Q. Now, during the incident of January 2005 with Officer
3 Mariani, did other officers try to subdue you?

4 A. It was other officers, yes, that tried to subdue me.

5 Q. In fact, Officer Volantino and an Officer Galloway had to
6 respond to subdue you; right?

7 A. I don't know the names. I just know it was a couple
8 officers that was trying to subdue me if that is what your
9 question was.

10 Q. For that particular misbehavior report charging you with
11 punching Officer Mariani in the jaw, four days later on
12 January 6, 2005 you had a Tier 3 hearing with a hearing officer
13 at Attica Correctional Facility; correct?

14 MR. NOVICH: Objection, your Honor.

15 THE COURT: Overruled.

16 MR. NOVICH: That's compound.

17 THE COURT: Overruled.

18 A. Ask the question again, please.

19 Q. So whether you admit it or not you received a misbehavior
20 report for punching Officer Mariani in the jaw; right?

21 A. That's the way that the ticket was written, yes, but did I
22 punch him in the face, no.

23 Q. For that ticket you had a hearing on January 6, 2005 at
24 Attica; correct?

25 A. Yes, I had a hearing.

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Hawks - cross

1 Q. Now, at that hearing you testified; correct?

2 A. Yes, on my behalf. Yes, I did.

3 Q. You were given the opportunity to present any witnesses and
4 documents; right?

5 A. And I did.

6 Q. At the end of that hearing you were found guilty of violent
7 conduct, assaulting Officer Mariani and refusing his direct
8 order; correct?

9 A. I was found guilty, yes. I already knew that was going to
10 happen. It was an officer.

11 Q. Let's get to the incident that occurred on August 25th,
12 2007, which you spoke about when you were examined by your
13 attorney; all right?

14 A. Yes. I hear you.

15 Q. Now, isn't it true that for that incident on August 25th,
16 2007 that happened at Green Haven Correctional Facility you
17 received a misbehavior report charging you with disobeying a
18 direct order, assaulting staff, violent conduct and other
19 charges; correct?

20 A. Yes. I was charged with violent conduct, assaulting staff,
21 and disobeying a direct order, yeah.

22 Q. Isn't it true that on that day you began arguing with
23 Officer Sabino, a female officer, and Officer Sabino gave you
24 direct orders to lock back into your cell?

25 A. I don't -- I don't recall she giving me direct orders to

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Hawks - cross

1 lock back in my cell. I do recall the lady female telling me
2 that we are going to get you a sergeant. Please don't give us
3 a problem and lock in.

4 Q. And you didn't lock in, did you?

5 A. I didn't lock in because I was being jumped.

6 Q. When Officer Sabino told you to lock back in your cell, you
7 refused and you didn't lock in, did you?

8 A. Ma'am, I was being jumped. I couldn't lock in. It was no
9 way for me to be locked in if somebody is -- somebody is
10 preventing you or stopping you from locking in.

11 Q. Isn't it true that Officer Sabino had to pull her emergency
12 pin that day?

13 A. I -- I don't -- I wasn't paying attention to her pulling
14 the pin. I was paying attention to getting these officers off
15 my back.

16 Q. At some point other officers responded?

17 A. Like I said, I was focusing on my trying to protect myself.

18 Q. Did other officers appear or not?

19 A. I -- I wasn't paying attention to that, ma'am.

20 Q. You say you were jumped --

21 A. Like I said, I wasn't paying attention. You can be jumped
22 and not be in your right state of mind.

23 Q. Isn't it true that two other officers, Officer Mallius and
24 Calazzo stepped in between you and the female officer, Officer
25 Sabino, and escorted you back to your cell?

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Hawks - cross

1 A. I don't recall that. Matter of fact, I never made it back
2 to my cell. They took me straight to the box. They threw me
3 in the box.

4 Q. Let's discuss why you never made it to your cell. During
5 this escort back to your cell and this Officers Mallius and
6 Calazzo escorting you, you turned and punched Officer Mallius
7 several times; right?

8 MR. NOVICH: Objection, your Honor.

9 THE COURT: Overruled.

10 A. That is a no answer, ma'am. I didn't punch the officer in
11 the face.

12 Q. Did you punch him anywhere else?

13 A. I didn't punch him anywhere.

14 Q. Officer Calazzo tried to help Officer Mallius and then you
15 punched him, too; correct?

16 A. Not -- no, not at all, ma'am. I didn't punch anybody.

17 Q. Well, then three other officers had to respond; right?

18 A. There's quite a few officers responded, yes.

19 Q. Do the names Officers Dryer, Thompson and Regimen ring a
20 bell?

21 A. Yes. I am familiar with Dryer. His name was on my ticket.
22 And the guy that you just mentioned, I can't pronounce his
23 name, yes, they -- they arrived.

24 Q. It took all those officers, five officers, to restrain you;
25 isn't that right?

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Hawks - cross

1 A. What do you mean "restrain" me?

2 Q. At some point you had to be restrained; right?

3 A. I don't understand the restrain part. I am trying to find
4 out what you mean by restrain.

5 Q. Restraining means they had to get your hands behind your
6 back anyway they can to handcuff you?

7 A. They did that.

8 Q. It took five officers to do that; right?

9 A. I don't know about five. I do know that they got -- they
10 got the restraints on me. That's all I can remember.

11 Q. During that incident, Mr. Hawks, you broke officer
12 Calazzo's nose, didn't you?

13 A. Absolutely not.

14 Q. During that incident Officer Mallius broke his arm, didn't
15 he?

16 A. I don't know anything about no officer being hurt. I don't
17 recall any officer being hurt in my incident.

18 Q. Isn't it true that Officer Mallius never returned to work
19 after that because of his injuries?

20 A. I don't know his -- his personal belief. I don't know
21 anything about that, his returning for duty. I have no
22 knowledge of that.

23 Q. Did you have a Tier 3 hearing for that incident
24 August 25th, 2007?

25 A. Yes. I received a lot of tickets that day also.

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Hawks - cross

1 Q. Do you recall that you had a Tier 3 hearing for this
2 August 25th, 2007 incident on September 4th, 2007?

3 A. I recall having an incident. I am not too sure what date
4 it was. I do recall the 25th of August.

5 Q. You had a hearing with a hearing officer and like the other
6 Tier 3 hearings you were able to produce witnesses, present
7 documents and have assistance in your defense; right?

8 A. Yes. I had a right to do all of that.

9 Q. Now, at the end of that hearing you were found guilty of
10 violent conduct, assaulting officers, refusing direct orders
11 and other charges; right?

12 A. Yes. I was found guilty. I wasn't going to be found
13 acquitted.

14 THE COURT: You were not?

15 THE WITNESS: I was not going to be found acquitted.

16 THE COURT: I see.

17 Q. Now, october 22, 2008. Is it true that on that date at
18 Southport Correctional Facility you received a misbehavior
19 report charging you with disobeying a direct order, assault of
20 staff, violent conduct and interference?

21 A. I recall that ticket, yes.

22 Q. So this is the third such misbehavior report you received,
23 right, so far?

24 A. I am not really counting it. If you are counting it, yes,
25 that's the count.

d7n6haw1

Hawks - cross

1 Q. This is at Attica Correctional Facility, then the Green
2 Haven Correctional Facility, then Southport Correctional
3 facility; right?

4 A. I was -- I was in three of those, yes. I received tickets
5 in those facilities.

6 Q. By the way, during the August 25th, 2007 incident at Green
7 Haven were any of these officers involved at all?

8 A. Ask the question again, please.

9 Q. During the August 25th, 2007 incident at Green Haven were
10 any of these officers sitting here involved?

11 A. My back was turned and I was handcuffed. I was handcuffed
12 behind so I didn't really get a chance to identify anybody's
13 face. So I can't sit up here on oath and say they was there or
14 wasn't there. My back was facing the wall and my hands were
15 behind my back, ma'am.

16 Q. Well, you never heard that any of these officers were
17 involved in that incident; correct?

18 A. I -- I don't recall any of those officers being involved in
19 my -- in that incident. It was a lot of officers that was
20 there.

21 Q. So getting back to the October 22, 2008 incident at
22 Southport. Isn't it true that on that date an Officer Lozido
23 was moving you from one cell to another when you turned and
24 headbutted Officer Lozido in the face?

25 A. I don't even recall a Lozido.

d7n6haw1

Hawks - cross

1 Q. Do you recall headbutting an officer in the face that day?

2 A. No. I don't recall none of that.

3 Q. Do you recall that on that day Officer Butler and Sergeant
4 Chapman tried to get you back into the cell and you struggled
5 with them?

6 A. I struggled to try -- to try to get free from getting hurt.
7 They got the cuffs on me and that was the end of the incident.
8 They took me where they had to take me and it was nobody --
9 nobody didn't get hurt.

10 Q. So these officers again had to restrain you; right?

11 A. They use the restraints because they came inside the cell.

12 Q. And you struggled with them?

13 A. Yes. Because they weren't supposed to come inside my cell.
14 They didn't follow protocol. They cracked my cell and ran in
15 there. They didn't get permission from the lieutenant or ask
16 the supervisor, Can we go in there and get this guy.

17 Q. So do you follow direct orders from officers when you feel
18 like or that the officers are doing the right thing whatever
19 you feel like?

20 A. It is not like whether or not I feel like following orders.
21 I follow orders whether it is wrong or right just to avoid the
22 problems.

23 Q. Getting back to that incident on October 22, 2008 at
24 Southport. An officer named Officer Frisbee appeared and tried
25 to get control of your legs; right?

d7n6haw1

Hawks - cross

1 A. I don't recall these names that you are mentioning on the
2 record. It's been a while.

3 Q. Some officer tried to get control of your legs and you
4 kicked him?

5 A. I don't recall these officers names, Miss.

6 Q. Did you kick an officer during that incident?

7 A. I don't recall their names so it is a no answer.

8 Q. Whether you can recall the name or not, did you kick an
9 officer that day?

10 A. I don't recall. Again, I don't recall.

11 Q. You were struggling; right?

12 A. I wasn't struggling at all.

13 Q. So again like the other incidents after the October 22,
14 2008 incident, you had a hearing, Tier 3 hearing, on
15 October 31st, 2008; right?

16 A. Yes.

17 Q. Again, just like the other hearings, you had the
18 opportunity to get assistance from inmates, from Corrections
19 staff, present witnesses, documents and defend yourself; right?

20 A. Yes.

21 Q. Now, at the end of that hearing you were found guilty of
22 violent conduct, assaulting officers, refusing to follow direct
23 orders and interference; correct?

24 A. That's what the ticket says.

25 Q. By the way, while your attorney was questioning you, you

d7n6haw1

Hawks - cross

1 brought up the fact that during these Tier 3 hearings you
2 weren't represented by an attorney; right?

3 A. Rephrase that question again, please.

4 Q. During your direct examination you spoke about the fact
5 that during these Tier 3 hearings you are not represented by an
6 attorney, right?

7 A. No.

8 Q. No inmate is represented by an attorney in these Tier 3
9 hearings; right?

10 A. No inmates. What do you mean?

11 MR. NOVICH: I am going to object, your Honor.

12 THE COURT: I will allow it. If you know.

13 THE WITNESS: Again, what do you mean "represent"?

14 THE COURT: A lawyer is typically present at these
15 prison hearings on behalf of the inmates?

16 THE WITNESS: Lawyers from the streets, you mean?

17 THE COURT: Yes, or lawyers from anywhere.

18 THE WITNESS: Did they come in and represent me?

19 THE COURT: She asked a more general question if you
20 know if they are available, used in these hearings.

21 THE WITNESS: Yes. That is what she asked.

22 A. No. I didn't have any attorneys from anywhere coming in.

23 Q. Have you ever heard of an inmate being represented by a
24 lawyer during these Tier 3 hearings?

25 A. No. I never recall anybody that I know of personally, no.

d7n6haw1

Hawks - cross

1 Q. These hearings are not done in a court of law like here;
2 right?

3 A. I don't -- you know, I never had that experience.

4 Q. Now we're going to go to the last incident.

5 Isn't it true on April 30th, 2011 at Southport
6 Correctional Facility you received a misbehavior report
7 charging you with attempted staff assault for violent conduct?

8 A. What year was this?

9 Q. April 30th, 2011.

10 A. Where was this at?

11 Q. Southport.

12 A. Yeah.

13 Q. So you received a ticket for those infractions; right?

14 A. I received a lot of tickets, ma'am.

15 Q. Is it true that on April 30th, 2011 at Southport you were
16 directed to back out of your cell when you turned your
17 shoulders violently in an attempt to strike Officer Thatcher
18 with your elbow?

19 A. No. I never turned violently to strike anybody. I was
20 pushed in my cell when I was supposed allegedly have went to
21 the shower and officer pushed me in my cell and they jumped me.
22 That is what happened.

23 Q. So you didn't try to elbow Officer Thatcher?

24 A. I was handcuffed behind my back, ma'am. Why would I pull
25 an act -- why would I pull an act like that? That is a no-win

d7n6haw1

Hawks - cross

1 situation. I wouldn't do nothing like that and jeopardize my
2 physical being.

3 Q. Well, on May 12th, 2011 you had a hearing for that ticket;
4 right?

5 A. Yes, of course, I had a hearing. There had to be a
6 hearing. Somebody got hurt.

7 Q. Again, at that hearing you had the opportunity to get
8 assistance from inmates and Corrections staff, present
9 witnesses, present documents and testify in your own defense;
10 correct?

11 A. And I did so.

12 Q. At the hearing after the hearing you were found guilty of
13 violent conduct and assault on staff; correct?

14 A. That was the outcome, yes.

15 THE COURT: Are you finished questioning about these
16 other incidents?

17 MS. KIM: Yes.

18 THE COURT: Before you go further, I want to give the
19 jury an instruction about these other incidents and it is as
20 follows: You have heard testimony this morning, and yesterday
21 for that matter, of other incidents of assaults involving
22 Mr. Hawks and law enforcement officials. The testimony that
23 you have heard yesterday and today may only be used for certain
24 limited purposes in your considerations and they are these:

25 One -- we have heard from him yet, but we will hear

d7n6haw1

Hawks - cross

1 from Mr. Mazzella -- in determining Mr. Mazzella's motive and
2 intent in restraining the plaintiff with respect to the
3 incident that we're considering here at trial; two, in
4 determining whether plaintiff, Mr. Hawks, had the requisite
5 intent and motive to commit assault and battery on Officers
6 Gunsett and Mazzella -- that is what the state is claiming
7 rather than defendants are claiming; and three, in determining
8 whether plaintiff's injuries in this matter, if any, were
9 proximately caused by any of the defendants' actions; or four,
10 in determining the amount of compensatory damages, if any,
11 should be awarded to plaintiff.

12 So testimony regarding other incidents, and by other
13 incidents I mean other than the one we're talking about here in
14 this case in which plaintiff may have been involved, may not be
15 considered for the purpose of proving plaintiff's propensity to
16 engage in the altercation described in this case or proving
17 that plaintiff was at fault in the altercation here.
18 Specifically, you may not find that simply because plaintiff
19 was involved in other assaults with other officers on other
20 occasions that plaintiff has a propensity for violence and thus
21 it is more likely than not that he provoked the altercation
22 and/or committed an assault and battery on defendant officers
23 in this case.

24 Did you get that? I am going to give you this
25 instruction again at the end when I give you the overall

d7n6haw1

Hawks - cross

1 instructions. Thank you.

2 MS. KIM: Thank you, your Honor.

3 BY MS. KIM:

4 Q. Mr. Hawks, on direct when your attorney Mr. Novich was
5 questioning you, you said that the officers tend to pick on you
6 because you stick up for the rights of other inmates; right?

7 A. Yes. I recall saying that.

8 Q. In these instances that we discussed, you weren't sticking
9 up for the rights of other inmates, were you?

10 A. No. I was the only one that was involved. So that
11 excludes everybody else if it is just me.

12 Q. You weren't being a hero during any of those instances;
13 right?

14 A. What do you mean by "a hero"?

15 Q. Withdrawn. Thank you.

16 MS. KIM: I have nothing further.

17 THE COURT: Any redirect?

18 MR. NOVICH: Yes, your Honor.

19 THE COURT: Let's go.

20 REDIRECT EXAMINATION

21 BY MR. NOVICH:

22 Q. Mr. Hawks, you were asked questions by Ms. Kim regarding
23 these other incidents that happened at the different facilities
24 you've been at -- Green Haven, Southport and Attica. In those
25 instances, did the officers attack you?

d7n6haw1

Hawks - redirect

1 A. Yes.

2 Q. And after the officers attacked you, did you defend
3 yourself?

4 A. Yes.

5 Q. Did you fight back?

6 A. As far as throwing punches?

7 Q. In defending yourself at times what would you do to defend
8 yourself?

9 A. Throw my hands up.

10 Q. And when you defended yourself after the officers attacked
11 you, do the officers, prison guards, do they like that?

12 A. No.

13 MS. KIM: Objection.

14 A. No. They didn't like that.

15 Q. Do the other guards to your knowledge, do they know that
16 you defend yourself when you are attacked by the guards?

17 A. Yes, sir.

18 Q. Do they like that?

19 A. They don't like that.

20 Q. Do they seem to retaliate against you as well?

21 A. All the time.

22 MS. KIM: Objection.

23 THE COURT: Sustained. The question to the objection
24 is sustained.

25 Q. Let's talk about the August 25th, 2007 incident. You

d7n6haw1

Hawks - redirect

1 already talked about it on direct examination your version of
2 what happened that day. This is the incident that happened
3 prior to the November 1st, 2007 assault.

4 Now, during your testimony on cross-examination
5 Ms. Kim asked you some questions. You don't recall any of
6 these prison guards -- any of these defendants being involved
7 in the incident. Do you remember that testimony?

8 A. Yes.

9 Q. But you were hospitalized that day, weren't you?

10 A. Oh, yes, I was. I went out.

11 Q. The jury has already seen the injuries. Did Defendant
12 Mazzella, talk to you at the hospital?

13 MS. KIM: Objection, your Honor.

14 A. Yes, he did.

15 Q. And what did Defendant Mazzella say to you in connection
16 about the August 25th, 2007 incident?

17 A. He -- he was really adamant about intimidating me, if I
18 said anything against staff that I was going to get what I
19 deserve.

20 Q. Did you know if Defendant Mazzella or any of the other
21 defendants were friends with their fellow officers at Green
22 Haven who assaulted you on August 25th, 2007?

23 A. I didn't know if they was friends or not. I don't have no
24 knowledge of that.

25 Q. You were asked some questions by Ms. Kim regarding the

d7n6haw1

Hawks - redirect

1 disciplinary hearings. You made it clear in Ms. Kim's question
2 to you they don't occur in a court of law and your answer was,
3 correct, they don't?

4 A. Right.

5 Q. You were represented not by counsel but my inmates; right?

6 MS. KIM: Objection.

7 THE COURT: Overruled.

8 Q. The inmates are not lawyers, are they?

9 A. Absolutely not. They wouldn't be where they are at.

10 Q. You have to get approval from the hearing officer not a
11 judge, a hearing officer who is in charge of that proceeding
12 before you can ask any questions of the officers involved;
13 right?

14 A. That's correct.

15 Q. Now, Ms. Kim made a point of saying you could also ask the
16 guards for help when you are charged with assault; right?

17 A. She did mention that.

18 Q. Is there a reason why you don't ask the guards for help
19 when you are being charged with assault?

20 A. Yes.

21 Q. Why?

22 A. I don't trust them and they are against me any way. Why
23 would I call an officer to speak in my behalf?

24 Q. So no lawyer, you are an inmate and the only other people
25 who are going to offer you help are the same people who

d7n6haw1

Hawks - redirect

1 assaulted you; is that right?

2 A. That's correct.

3 Q. And it is not in a court of law?

4 A. Absolutely not.

5 Q. And the punishment when you are found guilty is SHU, the
6 box; right?

7 A. That's right.

8 THE COURT: For the August 25 incident; is that right?

9 MR. NOVICH: I believe it is for any.

10 THE COURT: Well, what is your question?

11 MR. NOVICH: Yes, your Honor.

12 Q. For the August 25th incident you went to the box, didn't
13 you?

14 A. Yes.

15 Q. How long?

16 A. They gave me a total of 60 months.

17 Q. 60 months for the August 25th incident?

18 A. Right.

19 Q. Now, I want to go forward now two months later to
20 November 1st, 2007. November 1st, 2007 when you go to Fishkill
21 Reginal Medical Unit to receive for physical therapy or
22 treatment, did they cut down the cast that day?

23 A. Yes, they did.

24 Q. Did you still have a cast after they cut it down?

25 A. I had half a cast. Well, I would say a good third of it.

d7n6haw1

Hawks - redirect

1 Q. Can you show the jury after they cut it down where the cast
2 was on your arm and how wide it was?

3 A. It was down to the -- to the wrist area just above the
4 wrist bone and it just shows a little bit of a cast, a little
5 piece of a cast.

6 Q. Could you make a fist?

7 A. No, I couldn't make a fist. I couldn't ball my fist. It
8 was swollen.

9 Q. On November 1st, 2007 after you received physical therapy
10 and they cut down the cast before the assault, could you make a
11 fist?

12 A. No.

13 Q. Now, Ms. Kim asked you some questions yesterday about your
14 deposition. Do you remember that?

15 A. I recall.

16 MR. NOVICH: Your Honor, permission to approach the
17 witness?

18 THE COURT: Sure.

19 Q. I am going to put in front of you, Mr. Hawks, your
20 deposition transcript. Ms. Kim didn't show you that yesterday,
21 did she?

22 A. No, I don't recall seeing it.

23 Q. Do you see the date on the deposition transcript is
24 November 19th, 2010?

25 A. Yes.

d7n6haw1

Hawks - redirect

1 Q. So that is, what, almost two and a half, almost three years
2 ago; right?

3 A. Yes. Like three years ago.

4 Q. If you go to the very last page of the deposition
5 transcript, the last page of the index, do you see it is 137
6 pages; right?

7 A. Yes.

8 Q. So Ms. Kim didn't put a deposition transcript in front of
9 you and she was asking you about a conversation that happened
10 two and a half to three years ago that was 137 pages long;
11 right?

12 A. Yes. That's pretty steep, all the pages.

13 Q. She was asking you about this conversation what you recall
14 of 137 pages long that happened two and a half, three years
15 ago; right?

16 A. Yes.

17 Q. And she didn't give you the benefit of looking at --

18 MS. KIM: Objection.

19 THE COURT: We got it.

20 Q. Now, she asked you some questions about your filing the
21 complaints back in 2009; right?

22 A. That's correct.

23 Q. And I actually want you to turn to what you actually said
24 in your deposition transcript. Turn to page 56.

25 THE COURT: Do you have another copy?

d7n6haw1

Hawks - redirect

1 MR. NOVICH: Do you need one, your Honor? I provided
2 a set for your Honor and your clerk.

3 THE COURT: So this is dated November 19th, 2010, is
4 that what you are referring to?

5 MR. NOVICH: Correct, your Honor.

6 THE COURT: What page?

7 MR. NOVICH: Page 56.

8 THE COURT: Okay.

9 MR. NOVICH: Starting at line 14.

10 BY MR. NOVICH:

11 Q. Are you with me, Mr. Hawks?

12 A. Yes. I am on page 56.

13 Q. The lawyer that was there was that Ms. Kim who was asking
14 you questions?

15 A. No.

16 Q. So Ms. Kim wasn't even present during this deposition?

17 A. Absolutely not. It was another female.

18 Q. Now, on page 56 starting at line 14, the other attorney
19 asked you who typed it for you, referring to the complaint, and
20 your answer was: And how I wanted it to be documented. The
21 law library, the clerk, the law library, clerk. We got a clerk
22 that works in the facility. He does the clean up job. Like
23 say if the guy writes something or misspelled a word, he might
24 put it incorrectly or he might spell it the way he spelled it
25 if it is.

d7n6haw1

Hawks - redirect

1 "Q. You said you got some assistance. Who assisted you with
2 it?

3 "A. Inmate clerk. It was an inmate clerk assisted me.

4 "Q. What is the name of the clerk?

5 "A. Raheem. He was a Muslim clerk at Green Haven. He might
6 still be there if he hasn't gotten transferred. He should
7 still be there. He is doing a lot of time. His name is
8 Raheem.

9 THE COURT: What is your question?

10 MR. NOVICH: Yes. Is if this what it says, Judge.

11 THE COURT: Well, you are reading the whole --

12 MR. NOVICH: I am almost done.

13 Q.

14 "Q. Your complaint is dated November 6, 2009 and you signed it
15 at Southport Correctional; right?

16 "A. Yeah. I was in Southport when I signed it. Yes.

17 "Q. So did somebody help you with it at Southport or Green
18 Haven?

19 "A. Green Haven clerk did the work and it followed me when I
20 got to Southport and I had a follow-up inside the Southport
21 Facility to make sure that everything was done right so I sent
22 to the clerk and asked the clerk to assist me on anything that
23 I had written in my complaint and to find any errors that were
24 made and that is what the clerk did. He assisted me from the
25 guy that originally did it in Green Haven."

d7n6haw1

Hawks - redirect

1 Is that what you testified to at your deposition?

2 THE COURT: Did you want to ask if those questions
3 were asked and did you give those answers?

4 Q. Did you?

5 A. Yes. That was me who responded to those answers.

6 Q. Mr. Hawks, you testified that you dropped out of school at
7 ninth great?

8 A. Yes. He said that he is -- I testified.

9 Q. What is your reading level of education?

10 A. I got a fifth grade reading level. That was back -- back
11 then. It has improved since then.

12 MR. NOVICH: Nothing further, your Honor.

13 THE COURT: Do you want it take a two-minute break?
14 We'll come right back.

15 (Jury excused)

16 (Recess)

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d7n6haw1

Hawks - redirect

1 (In open court; jury not present)

2 THE COURT: What is happening with those photos that
3 we discussed before?

4 MS. KIM: Your Honor, I can bring them out with this
5 witness.

6 THE COURT: Okay.

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Hawks - redirect

1 (In open court; jury present)

2 THE COURT: Thank you very much. Please be seated.

3 Counsel, can I see you for a second.

4 (Continued on next page)

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d7n6haw1

Hawks - redirect

1 (At the side bar)

2 THE COURT: Do you have more case to put on?

3 MR. NOVICH: No.

4 THE COURT: It is not really out of turn.

5 MS. KIM: Right.

6 THE COURT: This is their first witness. You didn't
7 indicate whether you rested. Can I do that?

8 MR. NOVICH: Yes, Judge.

9 THE COURT: I will ask you first so they are clear as
10 to what is happening and then I don't know if you still have
11 any other documents that you want to add. I will allow that
12 later.

13 MR. NOVICH: Do it later.

14 THE COURT: I will ask you if you rested and advise
15 the jury this is the first witness.

16 MR. NOVICH: Yes, your Honor. Thank you.

17 (Continued on next page)

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d7n6haw1

Hawks - redirect

1 (In open court; jury present)

2 THE COURT: I have just discussed with counsel whether
3 the plaintiff has rested, that is to say concluded their part
4 of the case. Mr. Novich has indicated that they have.

5 Is that right, Mr. Novich?

6 MR. NOVICH: Yes, your Honor.

7 THE COURT: So we now have the first witness for the
8 defense.

9 THE DEPUTY CLERK: Sir, raise your right hand.

10 TERRY DAVIS,

11 called as a witness by the Defendants,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. KIM:

15 Q. Good morning, Mr. Davis.

16 A. Good morning.

17 Q. Introduce yourself to the jury.

18 A. My name is Terry Davis. I am a registered nurse for the
19 Department of Corrections.

20 Q. Do you work at a particular facility currently?

21 A. Fishkill Correctional Facility.

22 Q. Back in November of 2007 where were you working?

23 A. Fishkill Correctional Facility.

24 Q. How long have you been a registered nurse?

25 A. 15 years.

d7n6haw1

Davis - direct

1 Q. How long have you worked at Fishkill as a registered nurse?

2 A. A little over seven years.

3 Q. How long have you been employed by documents?

4 A. A little over seven years.

5 Q. As of November 2007 how long had you been working at
6 Fishkill Correctional Facility?

7 A. Approximately a year and a half.

8 Q. Mr. Davis, do you have an independent recollection of
9 examining an inmate named Brian Hawks sitting here today?

10 A. Vividly.

11 Q. So that was almost six years ago; right?

12 A. That's correct.

13 THE COURT: Did you say vividly?

14 THE WITNESS: Yes.

15 Q. Is there a reason why you remember this examination
16 vividly?

17 A. From my of years of employment with the Department of
18 Corrections, it was probably the most angry individual I had to
19 deal with in a use of force and I probably have seen well over
20 a hundred easy use of forces. Probably hundreds. We do
21 them -- it is a daily occurrence. Because his anger level was
22 so high, it vividly sticks out in my mind how angry he was when
23 I had to assess him. I would add also in my seven years plus
24 service to the Department of Corrections it was the only time I
25 felt uneasy taking care of a patient.

d7n6haw1

Davis - direct

1 Q. Can you describe Mr. Hawks' demeanor that day?

2 A. Well, he was on the wall. They had to -- I would say at
3 least six or eight officers had to hold him against the wall
4 when I came down there and I remember his nose was flaring.

5 THE COURT: I didn't hear.

6 A. His nose was flaring. A clear indicator to me that -- I am
7 an instructor. I teach a lot of paramedics classes, EMT
8 classes. I was concerned for my own well being. I actually
9 turned to the watch commander. I said, I do feel uneasy about
10 this. He says, Well, I promise --

11 MR. NOVICH: Objection, your Honor.

12 THE COURT: Sustained.

13 Q. Mr. Davis, you cannot talk --

14 THE COURT: Just tell us what you recall.

15 A. Okay. What I recall is that I was concerned for my safety.

16 Q. Now, where was Mr. Hawks when you first laid eyes on him on
17 November 1st, 2007?

18 A. He was in the bullpen. It is a receiving bullpen for
19 our-sourcing.

20 Q. Is that in the RMU basement?

21 A. In the basement.

22 Q. At Fishkill?

23 A. Yes.

24 Q. At that point where exactly was Mr. Hawks? Was he
25 standing? Sitting? Something else?

d7n6haw1

Davis - direct

1 A. He was in the back corner of the bullpen itself when I
2 walked into it.

3 Q. Who else was in the bullpen at that point?

4 A. 10 plus officers probably. The -- there was a lieutenant
5 in there and a watch commander.

6 Q. Do you recall seeing any of the four officer sitting here
7 today?

8 A. One of them, yeah.

9 Q. Which one?

10 A. Officer Graveline.

11 THE COURT: Which would be which officer?

12 THE WITNESS: The end one there closest to counsel.

13 THE COURT: Is that Officer Graveline?

14 THE WITNESS: Yes.

15 THE COURT: The record will reflect that he witness
16 identified Officer Graveline.

17 BY MS. KIM:

18 Q. How do you know Officer Graveline?

19 A. He worked in the facility.

20 Q. So he worked at Fishkill?

21 A. That's correct.

22 Q. When is the last time you saw Officer Graveline other than
23 today, this morning?

24 A. Probably three plus years maybe.

25 Q. So you know any of the other officers sitting here today --

d7n6haw1

Davis - direct

1 Officers Mazzella, Gunsett and Cruz?

2 A. No, not really. I may have crossed paths, but no.

3 Q. Now, so you had this concern for your safety?

4 A. Yes.

5 THE COURT: Wait a minute. How did you get there in
6 the first place? Why were you there?

7 THE WITNESS: I was notified by my administrator --
8 we're one floor above -- to go downstairs to the basement that
9 there was a use of force going on that needed assessment of an
10 inmate so I went downstairs.

11 Q. Do you recall if any type of code was called?

12 A. I believe a Code 10 was call. We were very busy in our
13 unit at the time. So I didn't hear anything after that so I
14 didn't think it was an issues. So when a Code 10 is called,
15 medicals doesn't always go to Code 10s. So I heard it and
16 didn't hear anything later on so I assumed everything was okay.
17 So shortly after a time frame I was told by my administrator to
18 go assess an inmate who was part of a use of force.

19 Q. What is a Code 10?

20 A. Code 10 is a fight.

21 Q. Could you just remind the jury again how you came to assess
22 Mr. Hawks?

23 A. I was notified by my administration that security was
24 requesting medical assistance downstairs in the basement. So I
25 went downstairs.

d7n6haw1

Davis - direct

1 Q. So by your administration, what do you mean?

2 A. My nurse administrator.

3 Q. Is that your direct supervisor?

4 A. That's correct. My direct supervisor.

5 Q. Do you report to any security staff?

6 A. No.

7 Q. Who do you report to?

8 A. Nurse administrator.

9 THE COURT: So after you got that instruction, you
10 went downstairs to this room?

11 THE WITNESS: That's correct.

12 THE COURT: For the purpose of examining Mr. Hawks?

13 THE WITNESS: Yes. Medical need or assistance and I
14 rendered treatment to the patient.

15 Q. Did you examine Mr. Hawks?

16 A. Yes, I did. I did a head-to-toe examination.

17 THE COURT: Head-to-toe examination?

18 THE WITNESS: Yes

19 Q. Can you describe from your recollection your examination of
20 Mr. Hawks?

21 A. I think if you put up my notes on there: Abrasions,
22 superficial injuries. There was no deformities that I read in
23 my notes that stuck out in my mind and nothing at that point
24 that needed to be examined by a doctor at that point. It was
25 just what I perceived to be a use of force with some

d7n6haw1

Davis - direct

1 resistance.

2 Q. You referred to your notes. Did you fill out any documents
3 regarding your examination of Mr. Hawks?

4 A. Yes, we have to. It is an AHR, ambulatory health record.

5 Q. Did you fill it out?

6 A. Yes, I did.

7 Q. Did you fill out what is called a use of force report?

8 A. That's correct.

9 Q. There is a binder in front of you, Mr. Davis. If you look
10 in the back there are defendants exhibits.

11 THE COURT: Just so everybody is clear, you didn't see
12 an altercation. You came after it; right?

13 THE WITNESS: That's correct.

14 THE COURT: When you came just describe who was where?
15 Where was Mr. Hawks? Where were the officers? What was going
16 on?

17 THE WITNESS: We walked down the basement. It is
18 bullpen, a receivable bullpen from other facilities. To the
19 rear of the bullpen, to the left corner of the bullpen the
20 officers had the inmate against the wall when I came down.
21 Again, everything was done other than he was very angry.

22 THE COURT: He was angry?

23 THE WITNESS: Very, very angry. That's when I said --
24 should I continue to tell you?

25 THE COURT: Yes.

d7n6haw1

Davis - direct

1 THE WITNESS: So I went up to the inmate. I explained
2 that I was with medical and I was there to help him out. I am
3 not security. I am here to help him out. I am going to assess
4 him and take care of his medical needs. So at that point the
5 officer was there. I wasn't -- didn't know all the security
6 staff there so one of the lieutenants had to talk to the
7 inmate, explain what I was there to help calm, ease him.
8 Because he was, as I told you, he was very, very angry, to
9 relax. At that point the officers began to let off on him and
10 we sat him down on the bench. There are benches in the
11 bullpen. He allowed me to examine him.

12 THE COURT: He did. He allowed?

13 THE WITNESS: Head-to-toe examination. He had
14 abrasions on his scalp, some red areas. Somebody who was
15 involved in a use of course. That is what I saw.

16 BY MS. KIM:

17 Q. Mr. Davis, in the back of that binder, there is a
18 Defendant's Exhibit 1. Would you please turn to it.

19 A. Okay.

20 Q. Are you looking at what is called a use of force report?

21 A. Yes.

22 Q. This is the first page of that exhibit. Mr. Davis, is that
23 the use of force report that you filled out?

24 A. Yes, I did.

25 Q. In connection with your examination of Mr. Hawks?

d7n6haw1

Davis - direct

1 A. Yes.

2 Q. Would you read for the jury what you wrote in that use of
3 force report?

4 A. Inmate Terry Davis, RN 2, 1-11007, 12:30 p.m. Inmate strip
5 to shorts, abrasion to top of head. Abrasions to right side of
6 face, ear and nose. Small abrasions to right elbow. All
7 abrasions cleaned and --

8 THE COURT: What is after that?

9 THE WITNESS: Cleaned non-saline.

10 THE COURT: NS.

11 A. Yes. All bleeding stopped. Red abrasions noted to the
12 head, chest, upper back, also bilateral arm, swelling noted to
13 left inter aspect of knee and right side of face including
14 right orbit. Patient stated pain 8 of 10 to back of neck, left
15 knee and left wrist. Inmate unable to make -- unable -- unable
16 to move all fingers. Inmate unable to make -- can move all
17 fingers. Ecchymotic areas to left wrist. Inmate assessment
18 complete and off to Green Haven. No loss of consciousness at
19 any time.

20 Q. Did you sign and date it?

21 A. That's correct.

22 MS. KIM: Your Honor, I apologize. I should have
23 moved it into evidence.

24 THE COURT: I will allow it.

25 (Defendants' Exhibit 1 received in evidence)

d7n6haw1

Davis - direct

1 THE COURT: These exhibits are going to be given to
2 the jury during your deliberations. You will have copies.

3 BY MS. KIM:

4 Q. Mr. Davis, it looks like there may have been a word missing
5 after inmate unable to make. Do you recall what you meant to
6 say?

7 A. You know, working for the state we do a lot of forms, I
8 guess, like this right here. I believe if you follow my AHR,
9 it may be make a fist. That sheet was not there. I omitted
10 it. I am sure it is fist.

11 Q. Thank you.

12 You mentioned an AHR. Did you also fill out an AHR?

13 A. That's correct.

14 Q. Would you look at Defendants' Exhibit 10 in the binder.
15 AHR is short for what?

16 A. Ambulatory health record.

17 Q. Is that the AHR that you filled out in connection with your
18 physical examination of Mr. Hawks?

19 A. That's correct.

20 THE COURT: Excuse me. Before we get to that when you
21 are doing the head-to-toe examination are you also
22 administering saline or whatever?

23 THE WITNESS: I brought the stuff down and I just --
24 his wounds were very superficial so I brought some 4x4's.

25 THE COURT: Some what?

d7n6haw1

Davis - direct

1 THE WITNESS: 4x4's to wipe the areas down. There
2 wasn't really much treatment needed. Most of it was just an
3 assessment. Usually treat them and go fill my notes out.

4 THE COURT: Do what?

5 THE WITNESS: Fill my notes out.

6 MS. KIM: Your Honor, defendants move into evidence,
7 Exhibit 10.

8 THE COURT: I will allow it.

9 (Defendants' Exhibit 10 received in evidence)

10 MS. KIM: May I publish it to the jury?

11 THE COURT: Yes.

12 BY MS. KIM:

13 Q. Mr. Davis, would you read that note that you wrote
14 concerning your examination of Mr. Hawks?

15 A. A 44-year-old inmate, alert times three was in altercation
16 with an officer and use of force used to control inmate. Per
17 staff no loss of consciousness. Pupils reactive. Abrasions to
18 top of head, right side of face, near ear. Swelling to
19 bilateral orbits, left inter aspect of knee. Swelling to left
20 hand, wrist, and thumb. Ecchymotic areas to right orbit, right
21 earlobe and right side of face.

22 Q. What is ecchymotic?

23 A. It is more than red. It is really black and blue. It was
24 more red. I would constitute ecchymotic.

25 Q. Please continue.

d7n6haw1

Davis - direct

1 A. Patient complained of pain of back of neck. Left knee and
2 left wrist. Full range of motion noted to all above mentioned
3 areas. Inmate stripped down, turned 360, additional
4 observations.

5 THE COURT: Did you say turned 360?

6 THE WITNESS: Yes.

7 THE COURT: Does that mean turned him around.

8 THE WITNESS: Yes, so we can observe him.

9 A. Skin upper chest, back red. Intact. Small abrasions to
10 right elbow. Patient able to make fist. Ecchymotic areas to
11 left wrist areas. Patient able to bend left knee, patient
12 stated he had no loss of consciousness. Patient has no other
13 complaints and deny any past medical history.

14 THE COURT: And what?

15 THE WITNESS: Denies no past medical history.

16 Q. It says problems?

17 A. No past medical history problems. Sorry.

18 Q. Mr. Davis, would you turn back to Defendants Exhibit 1 and
19 it's the page that has been stamped from the bottom 59.

20 THE COURT: You will see, ladies and gentlemen, when
21 you look at the exhibits there are more than one page.

22 THE WITNESS: What is stamped on it?

23 THE COURT: I think 59; is that right? On some copies
24 it may be hard to make out. I think it is the one that has a
25 human body. Would you confirm with the witness that is 59?

d7n6haw1

Davis - direct

1 MS. KIM: Yes. May I approach?

2 THE COURT: Yes.

3 Q. Mr. Davis, is that another portion of the use of force
4 report that you filled out?

5 A. Yes.

6 Q. Part B.

7 MS. KIM: May I publish to the jury?

8 THE COURT: Yes.

9 Q. This is part of Exhibit 1. I apologize you cannot get the
10 entire document.

11 THE COURT: Don't worry about it.

12 Q. Would you read for the jury what you wrote there.

13 A. Inmate stripped to boxers. Abrasions to top of head, right
14 side of face, ear to nose. Small abrasions to right elbow.
15 All abrasions cleaned by 4x4's normal saline. With all
16 bleeding stoped. Red areas noted to upper chest areas and
17 upper back and bilateral arms. Swelling noted to left hand and
18 wrist. Also slight swelling noted to left inter aspect of knee
19 and right side of face including right orbit. Patient stated
20 pain to back of neck, left knee and left wrist. Inmate unable
21 to make fist. Ecchymotic areas noted to wrist and left also.

22 Q. Mr. Davis, when you wrote that the inmate was unable to
23 make a fist, were you referring to one or the other hand?

24 A. I think probably the left wrist.

25 Q. Did you note anywhere that he was unable to make a fist

d7n6haw1

Davis - direct

1 with his right hand?

2 A. No.

3 Q. Would you turn to the diagrams on top. You circled certain
4 areas of this diagram. What does that indicate to you?

5 A. Those circled areas should coincide with your notes.

6 Q. So are those circles areas where you indicate whatever
7 injuries you noted?

8 A. Yes. Observable injuries.

9 Q. Mr. Davis, I am going to show you photographs that are
10 marked as Defendants' Exhibit 4-A through 4-H. They are in
11 that binder.

12 A. Defendants' Exhibit 4.

13 THE COURT: It is in the binder.

14 MS. KIM: May I approach, your Honor?

15 THE COURT: It is midway. I think you got it.

16 MS. KIM: Your Honor, defendants move into evidence
17 photographs 4-A through 4-H.

18 THE COURT: I am sorry.

19 MS. KIM: Defendants move into evidence photographs
20 4-A through 4-H.

21 THE COURT: Sure.

22 (Defendants Exhibits 4-A to 4-H received in evidence)

23 MS. KIM: May I publish these to the jury?

24 THE COURT: Yes.

25 BY MS. KIM:

d7n6haw1

Davis - direct

1 Q. Mr. Davis, would you look at the photograph marked
2 Defendant's Exhibit 4-A. Does that photograph appear to depict
3 what Mr. Hawks looked like on that day after you examined him?

4 A. Yes.

5 Q. Photograph 4-B.

6 A. Yes.

7 Q. The red markings that you see here on Mr. Hawks face, you
8 noted them in your AHR and also the use of force report; right?

9 A. That's correct.

10 Q. What about photograph 4-C, does that depict Mr. Hawks the
11 way he appeared when you examined him?

12 A. Yes.

13 Q. You see some abrasion on his neck. Is that also noted in
14 your AHR and use of force report?

15 A. Yes.

16 Q. What about photograph 4-D, does that show Mr. Hawks as he
17 appeared on that day?

18 A. Yes.

19 Q. 4-E?

20 A. Yes.

21 Q. How about photograph 4-F?

22 A. Yes.

23 Q. Do you know if that is the left arm or the right arm?

24 A. Left arm.

25 Q. Left arm. There is no cast on Mr. Hawks' left arm;

d7n6haw1

Davis - direct

1 correct?

2 A. That's correct.

3 Q. When you saw him, did you have a cast on his left arm?

4 A. No cast.

5 Q. Did you have a piece of cast that remained on his left
6 wrist?

7 A. No.

8 Q. Would you have noted that in your AHR and the use of force
9 reports?

10 A. Absolutely.

11 Q. Photograph 4-G, is that also Mr. Hawks as he appeared that
12 day?

13 A. That's correct.

14 Q. The last is photograph 4-H, is that the back of Mr. Hawks
15 as far as you know?

16 A. Yes.

17 THE COURT: I am going to mention to the jury when you
18 give these exhibits to them in the jury room, the photos that
19 plaintiff has introduced and the photos that the defendant has
20 introduced for the most part are the same not entirely. So if
21 you see any difference, there is none.

22 Q. Mr. Davis, Mr. Hawks in this case claims that he was
23 repeatedly punched and kicked by these four officers during the
24 use of force incident. Now, is that consistent with your
25 examination of Mr. Hawks?

d7n6haw1

Davis - direct

1 MR. NOVICH: Objection, your Honor.

2 THE COURT: Can you rephrase the question?

3 MS. KIM: I will rephrase it.

4 Q. Mr. Davis, Mr. Hawks in this case claims that he was
5 repeatedly punched and kicked by these four officers during
6 this November 1st, 2007 use of force incident. Based on your
7 experience as a nurse having done over 100 use of force
8 examinations, the injuries that you noted in your records, is
9 that consistent with four officers repeatedly punching and
10 kicking an individual?

11 MR. NOVICH: Objection.

12 THE COURT: I will allow that. If you know.

13 A. No.

14 Q. What would you say the injuries that you recorded are more
15 consistent with?

16 MR. NOVICH: Objection, your Honor.

17 THE COURT: Sustained.

18 MS. KIM: Thank you.

19 Q. You testified that you have done over 100 use of force
20 examinations; is that correct?

21 A. That's correct.

22 Q. Does that also exclude inmate on inmate assaults or were
23 there other examinations for inmate on inmate assaults?

24 A. We have done both, but in particular the use of force is
25 usually a break up with the security and security I have done.

d7n6haw1

Davis - direct

1 I really mean well hundreds I have seen. I worked at many
2 prisons, too. Not just mine. Inmate on inmate I see a lot of
3 those fights also. Yes, I do.

4 Q. How would you characterize the injuries that you found on
5 Mr. Hawks on November 1st, 2007?

6 A. Consistent with the report given it was resistance and use
7 of force.

8 Q. Did these injuries require any medical attention?

9 A. Other than assessment and some abrasions, no.

10 Q. How would you characterize the abrasions that you found on
11 Mr. Hawks?

12 A. Superficial.

13 Q. And did you clean the wounds?

14 A. Yes.

15 Q. In one of your reports you noted that bleeding was stopped?

16 A. Yes.

17 Q. Was Mr. Hawks bleeding?

18 A. There were abrasions. So you treat them with 4x4's. They
19 basically stopped. There was no blood on the floor. There was
20 very superficial bleeding involved.

21 Q. What are 4x4's?

22 A. The treatment things we use. Normal saline. What we use
23 to treat things like use of force injuries.

24 MS. KIM: Thank you. I have no further questions.

25 THE COURT: Counsel.

d7n6haw1

Davis - direct

1 MR. NOVICH: Yes, your Honor.

2 CROSS-EXAMINATION

3 BY MR. NOVICH:

4 Q. Good morning, Mr. Davis.

5 A. Good morning.

6 Q. Mr. Davis, I want to make some things clear. This is the
7 picture of Mr. Hawks after the assault on November 1st, 2007;
8 right?

9 A. That's correct.

10 MS. KIM: Objection.

11 THE COURT: Overruled. If you know.

12 Q. This area here, this is bruising and swelling; right?

13 A. I noted that, yes.

14 Q. I am sorry?

15 A. It is noted, yes. Swelling to the right side of the face.

16 Q. And bruising?

17 A. Yes.

18 Q. And it also looks like he has some type of scar or bruising
19 under his eye. Is that the orbit area?

20 A. That's correct.

21 Q. I want to make something clear. Is it your opinion that
22 that is a very superficial injury?

23 A. We're talking about the abrasions. Abrasions are
24 superficial.

25 Q. So are these injuries here very superficial, is that your

d7n6haw1

Davis - cross

1 opinion?

2 A. I didn't say that.

3 Q. I wanted to make sure that was clear to the jury. I didn't
4 understand.

5 Now, if I understood your testimony right, and correct
6 me if I did not, you said you made a distinction between use of
7 force incidents with Corrections officers, with guards and
8 inmate on inmate violence; right?

9 A. Well, I was trying to categorize what she was asking me.
10 She asked me inmates, which are separate type of incidents and
11 there are use of forces between an inmate and officer. I tried
12 to give you a rough amount how many I dealt with. I cannot
13 give you an exact number. Hundreds probably.

14 Q. Hundreds of use of force incidents?

15 A. Yes.

16 Q. That you have been involved in?

17 A. Assessments, yes.

18 Q. Again, just from using the nomenclature, the right cad
19 word, when you say use of force incidents, you are talking
20 about guards and inmates; right?

21 A. That's correct.

22 Q. You've been involved in hundreds of use of force incidents;
23 right?

24 A. Yes.

25 Q. Hundreds of situations where there has been violent

d7n6haw1

Davis - cross

1 encounters --

2 MS. KIM: Objection.

3 Q. -- between guards and inmates?

4 THE COURT: I will sustain that.

5 Q. You have seen hundreds of situations where inmates have
6 received beatings by guards --

7 MS. KIM: Objection.

8 Q. -- correct?

9 THE COURT: Overruled.

10 A. Restate that, please.

11 Q. You have seen hundreds of situations where guards have
12 beaten inmates; correct?

13 A. No.

14 Q. Well, didn't you say you were involved in hundreds of use
15 of force incidents?

16 A. Yes.

17 Q. In those incidents that is when guards and inmates are
18 involved in some type of violent encounter; is that correct?

19 A. That's correct.

20 Q. In those situations inmates receive injuries at times,
21 don't they?

22 A. Not often. Sometimes they have injuries.

23 Q. Now, when you examined Mr. Hawks that day on November 1st,
24 2007 prior to you examining him, do you know if anyone else at
25 the medical staff at RMU at Fishkill had looked at him?

d7n6haw1

Davis - cross

1 A. I don't believe so.

2 Q. Do you know?

3 A. I don't know.

4 Q. I am sorry. I didn't hear you?

5 A. I don't know that, no.

6 Q. Do you know if anyone had removed Mr. Hawks's cast that day
7 before you examined him?

8 A. No, I don't.

9 MR. NOVICH: Your Honor, may I have permission to
10 approach?

11 THE COURT: Yes, sure.

12 Q. I am showing you what counsel previously showed you, which
13 was Exhibit 4-F. This is picture 4-F what you testified before
14 of Mr. Hawks' left arm that day after the incident; right?

15 A. Yes. Uh-huh.

16 Q. Now, do you see where I am pointing to? There are two
17 marks that are right there. Do you see that?

18 A. That's correct.

19 Q. They are outlines, arn't they?

20 A. I guess.

21 THE COURT: Do you have one for the jury?

22 MR. NOVICH: Sure, Judge. It may be harder to see on
23 the overhead.

24 Q. These are the outlines I was pointing to before, correct,
25 where you said "I guess"?

d7n6haw1

Davis - cross

1 A. Yes. Indentations.

2 Q. Indentations, right, on the left wrist; is that correct?

3 A. Yes.

4 Q. You have to speak out loud.

5 A. Yes.

6 (Continued on next page)

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D7NHHAW2

Davis - cross

1 BY MR. NOVICH:

2 Q. Now, if I understood your testimony on direct, you said you
3 gave Mr. Hawks a head-to-toe examination?

4 A. That's correct.

5 Q. When you do a head-to-toe examination, do you have to move
6 the inmate around, do you have to look at different parts of
7 his body?

8 A. Yes.

9 Q. Do you have to tell him to do certain things so you can
10 see, examine parts of his body?

11 A. Yeah. We usually tell him -- it depends on what situation
12 it is. They usually stand up and turn 360, but I was able
13 to -- I don't know exactly how I did it -- but I was able to
14 see 360 of his body, check for injuries.

15 Q. Tell us typically -- I know you -- tell us typically how
16 you do a 360 or a head-to-toe examination in terms of giving
17 the inmate directions, different things to do?

18 A. Normally use of force, when we are involved, they are
19 normally in a cell. They strip down to their boxers. They
20 turn 360 for us so we can observe the entire body, head-to-toe
21 examination, working from the head down to the toe examination.

22 Q. You tell the inmate take off your clothes, strip down to
23 your boxers, correct?

24 A. That's correct.

25 Q. You tell the inmate to turn around?

D7NHHAW2

Davis - cross

1 A. That's correct.

2 Q. If you need to examine a different part of his body, you
3 tell him to do that?

4 A. That's correct.

5 Q. Mr. Hawks did all that, didn't he?

6 A. Yes, he did.

7 Q. Did he comply with your instructions?

8 A. Yes.

9 Q. Did he give you a hard time?

10 A. After initially, what I wanted, as I explained to you,
11 initially, until the lieutenant got involved and explained to
12 him to comply with us, comply with our department, he wasn't
13 forthcoming into helping, at least allowing me to examine him.
14 Because initially, I felt very uneasy about an exam. Like I
15 told your Honor earlier, vivid, because I was concerned -- I
16 don't get concerned very often -- because his demeanor, how
17 upset, how angry he was.

18 So at that point, as I told you, when we are able to
19 ease him down, then he was able to be cooperative. But
20 initially, no. Initially I was even debating examining him.
21 Because sometimes we have cases where they are so aggressive,
22 the medical staff has to begin -- you know, our safety is most
23 important at that point. So after he calmed down, the
24 lieutenant talked him down, I was able then to examine him.

25 Q. Understood. Initially when you saw Mr. Hawks, which was

D7NHHAW2

Davis - cross

1 shortly after the assault, right?

2 A. I don't know how long after it but probably shortly after.
3 Within half an hour I imagine.

4 Q. He was angry and upset, right? He had just been in an
5 assault, correct?

6 MS. KIM: Objection.

7 THE COURT: Sustained.

8 Q. He had just been assaulted?

9 MS. KIM: Objection.

10 THE COURT: Sustained.

11 Q. He had just come from an altercation with guards, correct?

12 A. That's correct.

13 Q. And he was angry and upset?

14 A. That's correct.

15 Q. He had just come from an altercation with --

16 THE COURT: We have been over this now, the second
17 round.

18 Q. And after he calmed down, he complied with all of your
19 requests, right?

20 A. That's correct.

21 Q. Did he threaten you in any way?

22 A. Did not.

23 Q. Did he strike you in any way?

24 A. Did not.

25 Q. Did he attempt to strike you?

D7NHHAW2

Davis - cross

1 A. Did not.

2 Q. Did the guards, did any of the defendants tell you what had
3 happened?

4 A. No.

5 Q. Did defendant Gunsett tell you that he punched Mr. Hawks in
6 the face?

7 A. The only -- can I just --

8 Q. Just answer that question.

9 A. No.

10 Q. Did defendant Gunsett tell you that he kneed Mr. Hawks in
11 the head?

12 A. No.

13 Q. Did the defendant Gunsett tell you that he pushed Mr. Hawks
14 on the ground, that Mr. Hawks fell on the ground?

15 A. No.

16 Q. Now, you have seen the pictures.

17 A. Yes.

18 Q. Mr. Hawks had injuries to his head, right?

19 A. That's correct. Yes.

20 Q. He had injuries to his face, correct?

21 A. That's his head.

22 Q. He had injuries to the top of his head, right?

23 A. Abrasions, yes.

24 Q. He had injuries to his orbit, which is underneath the eye,
25 if I understand.

D7NHHAW2

Davis - cross

1 A. That's correct. Yes.

2 Q. He sustained some head trauma, didn't he?

3 A. Yes.

4 Q. Did you order an MRI?

5 A. No.

6 Q. Did you order an x-ray?

7 A. No.

8 Q. Did you order a CAT scan?

9 A. No.

10 Q. Did you give him any cognitive tests?

11 THE COURT: Any what?

12 MR. NOVICH: Cognitive tests.

13 A. No.

14 Q. Did you ask him, for instance, what day is it, who is the
15 President, ask him to --

16 A. Yeah. It is indicated in my report.

17 Q. Did you --

18 A. Alert times three. Yes.

19 Q. So you asked him those questions?

20 A. Yes.

21 Q. Did you give him any type of neurological testing?

22 A. No.

23 Q. Did you take his blood pressure?

24 A. No.

25 Q. Did you give him any type of respiratory testing, check his

D7NHHAW2

Davis - cross

1 breathing or his pulse?

2 A. No.

3 Q. And in medicine you don't know what you don't know, right?

4 A. That's correct.

5 THE COURT: In everything.

6 Q. And these tests that you did not perform, that were not
7 performed on Mr. Hawks, these tests would reveal whether or not
8 there is some type of injury to the brain, correct?

9 A. That's correct.

10 Q. They would --

11 MS. KIM: Objection, your Honor.

12 THE COURT: Overruled.

13 MS. KIM: Side bar, please.

14 THE COURT: Overruled.

15 Q. They would reveal whether there was some type of injury to
16 the skull, correct?

17 A. Possible.

18 Q. And they weren't performed on Mr. Hawks, were they?

19 A. Other than the level of consciousness, I told you. We do,
20 we ask questions. I asked questions of him, time, date, place,
21 where is he at, his name. My first sentence in that thing, it
22 says alert times three. The questions we ask give us a level
23 of consciousness of the individual, of the patient.

24 Q. Are you saying whenever you do that in all situations
25 that's sufficient, you never have to do an MRI or CAT scan or

D7NHHAW2

Davis - cross

1 any of the other tests I mentioned?

2 A. Well, at this point it was -- he was headed back to his
3 facility. He is not our inmate.

4 Q. I wasn't asking about that. I was just asking you about
5 generally. When someone sustains head trauma, you should never
6 perform any of these other tests that I mentioned that were
7 performed?

8 A. There are a lot of variables in that.

9 MS. KIM: Objection, your Honor.

10 THE COURT: Overruled.

11 MR. NOVICH: Nothing further, your Honor.

12 THE COURT: Anything else? We will excuse the
13 witness.

14 MS. KIM: Just a few, your Honor. I'm sorry.

15 REDIRECT EXAMINATION

16 BY MS. KIM:

17 Q. I will be quick, Mr. Davis.

18 Now you testified that you have been involved in over
19 100 use of force exams, correct?

20 A. That's correct.

21 Q. I think you said on cross-examination that sometimes you
22 don't find an injury?

23 A. Yes.

24 Q. If an inmate is in a use of force and doesn't have any
25 injuries, why are you examining him?

D7NHHAW2

Davis - redirect

1 A. All use of forces have to be examined by medical staff.

2 Q. So is any time an officer lays hands on an inmate
3 considered use of force as far as you know?

4 A. Pretty much so, yeah.

5 Q. So it doesn't mean --

6 A. The problem with -- a use of force is pretty much a
7 takedown and they comply. It is when the resistance happens,
8 that is when your injuries happen.

9 Q. Again, even if there are no injuries to the inmate, you are
10 required to examine him, right?

11 A. Have to, yes.

12 Q. Do nurses order MRIs or CAT scans or anything like that?

13 A. No.

14 Q. Who orders such tests?

15 A. The MDs do.

16 Q. The doctors? Yes?

17 A. That's correct.

18 Q. Now, during the cross-examination your answer was cut off.

19 Why wasn't Mr. Hawks provided further medical care at
20 Fishkill?

21 A. Because he is an inmate of Green Haven corrections and he
22 was an inmate coming to us, receiving services. We have
23 different doctors come -- they all come to our facility --
24 cardiologist, whatever service they need. So whatever service
25 he is there to see, that is why he was there. And he's not, he

D7NHHAW2

Davis - redirect

1 is not a Fishkill correction facility inmate; he is a Green
2 Haven inmate.

3 Q. Is there a medical clinic at Green Haven?

4 A. Yes, there is, and everything was forwarded to them.

5 Q. So is it fair to say that if he required further medical
6 attention he was going to get it at Green Haven?

7 A. That's correct.

8 MS. KIM: Thank you. No more questions.

9 THE COURT: OK. Thanks very much.

10 Next witness.

11 THE DEPUTY CLERK: Sir, you can step down. Thank you.

12 THE COURT: Ms. Kim, next witness.

13 (Witness excused)

14 MS. KIM: The defense calls David Mazzella.

15 I'm sorry. Your Honor, can we have a short break?

16 THE COURT: No, let's keep going.

17 MS. KIM: Your Honor, side bar.

18 THE COURT: OK.

19 MS. KIM: Sorry.

20 (Continued on next page)

D7NHHAW2

Davis - redirect

1 (At the side bar)

2 MS. KIM: I'm sorry. The witness needs to use the
3 restroom.

4 (Continued on next page)

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D7NHHAW2

Davis - redirect

1 (Jury present)

2 THE COURT: We will take a one-minute break.

3 (Jury excused)

4 (Recess)

5 (Jury present)

6 THE COURT: We will have the next defense witness.

7 DAVID MAZZELLA,

8 called as a witness by the Defendants,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. KIM:

12 Q. Good morning, Mr. Mazzella.

13 A. Good morning.

14 Q. Are you currently employed?

15 A. Yes, I am.

16 Q. Who is your employer?

17 A. The New York State Department of Corrections.

18 Q. Is it known as DOCS?

19 A. Yes.

20 Q. We will call it DOCS.

21 Where do you work presently?

22 A. Green Haven Correctional Facility.

23 Q. And how long have you worked at Green Haven?

24 A. A little over 16 years.

25 Q. How long have you been employed by DOCS?

D7NHHAW2

Mazzella - direct

1 A. 17.

2 Q. What is your current position at Green Haven?

3 A. I am a New York state correction officer.

4 Q. In general, what are your duties as a correction officer?

5 A. Our duties are the care, custody and control of inmates.

6 Q. Where were you born?

7 A. Marlboro.

8 Q. Where did you go to high school?

9 A. Marlboro.

10 Q. Where is Marlboro?

11 A. About an hour and a half or so upstate from here.

12 Q. Do you have a family?

13 A. Yes, I do.

14 Q. Who are your family members?

15 A. I have a wife and two stepsons and just recently had a
16 grandchild, granddaughter.

17 Q. Congratulations.

18 A. Thank you.

19 Q. Now, did you receive any training at the time that you
20 became a correction officer?

21 A. Yes, I did. We actually have to go to Albany for a
22 seven-week training course. At the completion of that
23 training, we become correction officers.

24 Q. Is that called the training academy?

25 A. Yes.

D7NHHAW2

Mazzella - direct

1 Q. During these seven weeks, do you actually live there?

2 A. Yes, we do. We live there during the week. On the
3 weekends we are allowed to go home.

4 Q. What type of training did you receive at the academy?

5 A. We receive from firearms, all the directives pertaining to
6 the care, custody and control of inmates, transportation of
7 inmates, penal law, laws that also deal with uses of force or
8 anything in the nature to do our duties and supervising inmates
9 in the facilities.

10 Q. Now as a correction officer, one of your duties is to keep
11 the inmates safe, correct?

12 A. Correct.

13 Q. Do your duties include keeping anyone else safe?

14 A. Yes. It is our duty to make sure everybody in our facility
15 or even out of it while we are supervising inmates is that the
16 inmates are safe, the officers are safe, and even the civilians
17 that might even work in those jails.

18 Q. What kind of civilian employees work at the prisons?

19 A. There are multiple. You have clerks, operators, civilian
20 cooks, who actually help out the inmates with the food, to
21 counselors, parole officers, medical staff. There's a lot.

22 Q. Now at the academy you received training on how and when to
23 use force on an inmate?

24 A. Yes, we do.

25 THE COURT: Ms. Kim, you may want to bend that

D7NHHAW2

Mazzella - direct

1 microphone toward yourself a little bit.

2 Q. What is the use of force?

3 A. The use of force is the use of force to gain compliance
4 with a lawful order.

5 Q. So if an inmate is being violent or combative, is it
6 appropriate to use force?

7 A. Yes. Depends on the degree of the situation. Uses of
8 force can actually be from verbal to where we are giving them
9 orders, to get to an area, get to a wall, to where we actually
10 have to use our hands, batons, depending on the situation and
11 the escalation of the force.

12 Q. Now while you are inside, working inside a prison, are you
13 given any weapons to use?

14 A. You are allowed to carry a baton while inside the facility.

15 Q. Are you required to carry a baton?

16 A. No, you are not.

17 Q. What was your training as to the amount of force that you
18 can properly use against an inmate?

19 A. You would use enough force to gain the compliance. You
20 don't go over. As soon as that inmate complies, it is called
21 deemed necessary or reasonable.

22 Q. Is it fair to say you can use such force as reasonably
23 necessary to get control of the situation?

24 A. Correct.

25 Q. Where is Green Haven located?

D7NHHAW2

Mazzella - direct

1 A. It is about, I would say about an hour and a half north of
2 here.

3 Q. What kind of correctional facility is Green Haven?

4 A. Green Haven is a maximum security prison.

5 Q. About how many inmates are housed at Green Haven?

6 A. We are roughly around 2,000.

7 Q. On any given shift, approximately how many correction
8 officers are working at Green Haven?

9 A. Approximately 100 officers. It might be a little less, it
10 might be a little more, depending on what is going on.

11 Q. So that is about 100 officers to maintain control of
12 approximately 2,000 inmates?

13 A. Yes.

14 Q. How would you characterize your job?

15 A. The job I have right now?

16 Q. Yes.

17 A. I am now, right now I work in the kitchen. I am a mess
18 hall officer. So on any given day there are four of us in the
19 mess hall with on the average of 80 inmates that we have to
20 supervise.

21 Q. Now back in November of 2007 did you have a different job?

22 A. Yes. I was a transportation officer for Green Haven.

23 Q. What does it mean to be a transportation officer?

24 A. A transportation officer would be assigned to taking
25 inmates, could be transferred to another jail, could be clinic

D7NHHAW2

Mazzella - direct

1 call outs at other jails. We also take them to court, to
2 different hospitals, funeral trips. We will actually take the
3 inmate down so they can see their family on funeral trips. And
4 pretty much that's it.

5 Q. Now you described -- actually, you testified that Green
6 Haven is a maximum security prison, right?

7 A. Yes, it is.

8 Q. What are the different levels that are assigned to the
9 different correctional facilities around the state?

10 A. We have three. Well, actually -- three. Minimum, medium
11 and maximum.

12 Q. Now Green Haven being a maximum security facility, what
13 type of inmates are housed there?

14 A. Generally we are dealing with the ones that are doing
15 long-term bids, prison sentences.

16 Q. Is there any danger involved in performance of your job?

17 A. Every day.

18 Q. Can you describe to the jury what type of dangers a
19 correction officer faces?

20 A. At any given moment, depending on -- you don't know what
21 might happen. An inmate might be having a bad day and just
22 turn around and attack you. He can make what they call a shank
23 or a weapon and stab you with it. Excuse me. They also can
24 throw feces at you, urine. And at any given time you just
25 always have to be on alert, that at any chance that -- you

D7NHHAW2

Mazzella - direct

1 don't know today is this going to be the day that someone is
2 going to be so upset that they try to attack you.

3 Q. Now I would like to direct your attention to November 1,
4 2007 when the incident with Mr. Hawks happened. OK?

5 A. OK.

6 Q. Were you working at Green Haven that day?

7 A. Yes, I was.

8 Q. What was your shift?

9 A. That day I was probably 7 to 3. 7 in the morning until 3
10 p.m.

11 Q. You were a transportation officer on that day?

12 A. Yes, I was.

13 Q. When did you start working as a transportation officer?

14 A. I believe I started around 2001.

15 Q. So on November 1, 2007, you were working your regular
16 assignment that you had been working since 2001?

17 A. Correct.

18 Q. What was your particular assignment as the transportation
19 officer on November 1, 2007?

20 A. We were taking inmates to a clinic call out over at
21 Fishkill Correctional Facility's RMU, the regional medical
22 center.

23 Q. Now why are inmates taken from Green Haven to Fishkill to
24 the RMU for medical care?

25 A. What happens is the jails in that area they call a hub. In

D7NHHAW2

Mazzella - direct

1 that hub a specialty doctor -- could be a cardiologist, could
2 be a hand doctor -- certain people will go to Fishkill to see
3 all the inmates in that hub, all the jails in that area. So
4 when they have these call outs, we will take them from Green
5 Haven over to Fishkill to see these specialty doctors.

6 Q. Now would you please describe to the jury the standard
7 procedures that were used back in November 2007 when
8 transporting inmates from Green Haven to the Fishkill RMU.

9 THE COURT: First of all, do you remember how many
10 people you were taking from Green Haven to Fishkill?

11 THE WITNESS: I believe there were around six inmates
12 that day that we were taking over there.

13 THE COURT: Do they go by bus or car?

14 THE WITNESS: We have vans. We have eight-passenger
15 vans, is what they call them.

16 Q. As I recall there were six inmates being transported from
17 Green Haven to Fishkill that day?

18 A. Yes.

19 Q. How many officers were accompanying the inmates that day,
20 including yourself?

21 A. There was a total of four.

22 Q. Who were the other officers?

23 A. It was officer Gunsett, officer Cruz, and I do not recall
24 the fourth officer's name.

25 Q. How many vans did you take to go to Fishkill?

D7NHHAW2

Mazzella - direct

1 A. We took two vans that day. We had to take the wheelchair
2 van because we had one wheelchair inmate.

3 Q. How many officers were in each van?

4 A. Two officers for each van. It is mandatory, two officers
5 have to be in each van.

6 Q. Would you describe to the jury the standard procedures that
7 were used back then when transporting inmates from Green Haven
8 to Fishkill.

9 A. On a day like this, I would go in, I would get my
10 paperwork, which would give me my permission to take those
11 inmates out of Green Haven to Fishkill. I can't just grab
12 anybody. I actually have to have, it is what is called an
13 order to let those inmates leave that jail, be given photo ID
14 cards of their faces. I have to make sure they match. Then I
15 also get their cell locations. We put this all on what is
16 called an itinerary. That itinerary tells me what time I need
17 to leave the jail, what time I need to make it to Fishkill, and
18 I also have to write the times down when I leave the jail and
19 when I get to Fishkill on that so my jail knows that I made it
20 there safe and on time.

21 At this time because I had two vans I do not remember
22 who I used. Me and another officer would go get the equipment
23 that we need for that day. The equipment would be all the
24 chains that we use to shackle up the inmates. This would be
25 leg irons, waist chains, black boxes, and handcuffs.

D7NHHAW2

Mazzella - direct

1 At that time me and whoever that other officer was, we
2 would get our keys to get the van. We would go up front. We
3 would get our weapons that we have to use. The other officers
4 that would have been with me, I would assign them to go get the
5 inmates. What that means is I would call each block, let them
6 know -- ask them is this inmate in this cell. They would give
7 me a yes or no. Tell them what is going on. I will be down
8 there to pick them up to go on a trip.

9 While they are doing that to get the inmates, we are
10 going around to what is called the rear gate of Green Haven.
11 We bring the vans inside the walls, drive them over to where
12 the clinic is, and then we would get out and go assist the
13 other officers in getting these inmates.

14 We have what is called a transportation shack in Green
15 Haven. That is where we would bring all the inmates. And in
16 that room, that is where we strip frisk them and we handcuff
17 them. Basically what I am talking about is, strip frisk is a
18 head-to-toe examination to make sure they have no contraband on
19 them whatsoever.

20 After those strip frisks are done, we will handcuff
21 them, put the waist chains on and the black box, put leg irons
22 on them and then we will transport them over to where the vans
23 are, put them in the vans, go back to the rear gate where we
24 came in through before, and at that time a sergeant will
25 actually ID the inmates to make sure that is the person I have

D7NHHAW2

Mazzella - direct

1 and that is where I am going. Then we go over to Fishkill
2 correctional.

3 Q. What is a black box?

4 A. A black box is this little box. It is square. It
5 literally covers over the holes on the handcuffs so that they
6 can't get to the holes and try to break free out of their
7 cuffs.

8 Q. Can we call the entire apparatus the shackles?

9 A. Yes.

10 Q. Is that what you call them?

11 A. Yes.

12 Q. Now when inmates are in their home facilities, they are not
13 in shackles, right?

14 A. No, they are not.

15 Q. They don't have any restraints, right?

16 A. Except for SHU.

17 Q. If an inmate is in what is called special housing unit,
18 they are restrained?

19 A. Yes. When an inmate is in special housing unit, when they
20 come out of their cells they have to be in full restraints, is
21 what we call it.

22 Q. When the SHU inmate is inside his cell he doesn't have any
23 restraints?

24 A. When he is inside his cell he doesn't. When he comes out
25 of his cell, he has to be in full restraints.

D7NHHAW2

Mazzella - direct

1 Q. So the inmates are shackled at Green Haven before they are
2 taken into the van, right?

3 A. Correct.

4 Q. Can you go step by step, because I am sure the jury doesn't
5 have a clear idea, how do you put shackles on an inmate?

6 A. The procedure I always follow is the inmate will stand in
7 front of me. I will make sure he has his hands in his pockets.
8 I will take the handcuffs first. Depending on what hand I tell
9 him to take out first, I will tell him to take out one of his
10 hands. Say for the sake his left hand. I will place the one
11 cuff on it. Then I will tell the inmate to take the other hand
12 out of his pocket and I will place the other cuff on him. At
13 this time I what is called a double lock. There is a little
14 switch on the cuffs to where it makes it harder for them to try
15 to pick open the lock, is what it is called. I make sure that
16 they are securely on and not moving.

17 At that time I take what is called a black box, what
18 we were talking about before. It literally covers over the
19 handcuffs to make sure that they can't get to the keyholes. At
20 that time I take what is called a waist chain. This waist
21 chain, with two locks, like normal master locks, we use one to
22 wrap around his waist, lock it to his waist, making sure he has
23 enough room to where he can breathe and it is not super
24 uncomfortable. One end of that chain has this little box on it
25 almost and actually slides through the middle of the black box.

D7NHHAW2

Mazzella - direct

1 That is to make sure everything is secure to the chain and to
2 the cuffs. The other end of that chain we actually slide
3 through the hole that is in the other side of the chain, loop
4 it back through and then we lock it back onto his waist.

5 We give the inmate enough space to where he can
6 actually reach his mouth and his lower area in case he does
7 have to go to the bathroom. We don't have to take the cuffs
8 off again because he is able to move, sneeze, cough. He can
9 cover his mouth and his face with his hands.

10 At that time, depending on where we are, and most
11 times we try to have the inmate sit, we put the leg irons on
12 him. It is pretty much just like handcuffs but the chain
13 between them is a lot longer and they are a lot bigger. Make
14 sure to double lock them too so they don't crush onto his
15 Achilles and it gives him enough freedom and movement to walk
16 but not run away from us. That's pretty much it.

17 Q. Thank you.

18 Now you described how you have an inmate keep his
19 hands in his pockets and take them out one at a time. Why is
20 it done that way?

21 A. I do it that way to make sure that I'm safe and that the
22 inmate's safe and that he is following my directions for that
23 time.

24 Q. All right. Would you take us through what happened on
25 November 1, 2007 from the time that you left Green Haven to the

D7NHHAW2

Mazzella - direct

1 time when the incident with Mr. Hawks happened. You don't have
2 to go over the standard procedures again.

3 A. OK. We arrived at Fishkill correctional. We went to their
4 RMU, their regional medical unit. They have a lower level of
5 this unit where we bring our cars into. We take the inmates
6 out. We get escorted into what is called like a little bullpen
7 room, also a waiting room. In there we will take everything
8 off the inmates, the shackles, the waist chains, and
9 everything.

10 At this time we would take the inmates from that room
11 into what is called a bullpen. The inmates would go over to
12 the bullpen. When they are in that bullpen there is actually
13 an officer who watches that whole entire area from what is
14 called a bubble. He controls all the gates down there and all
15 the doors. When those inmates get into that bullpen, he will
16 actually close it shut because he has to open up that bubble
17 that he is in so I could put my cuffs and my chains and
18 everything in there so the inmates can't get in there and try
19 to take over an area.

20 As soon as all of my stuff is done, I will take my
21 paperwork and when the Fishkill upstairs is ready for us, we
22 get escorted upstairs through an elevator to another bullpen
23 where we put the inmates.

24 In that bullpen they wait until the doctors or the
25 nurses are ready to see each individual inmate. On that day,

D7NHHAW2

Mazzella - direct

1 like I said, I had about six inmates. So we were all over the
2 place, to different doctors, different clinics, different call
3 outs.

4 At the end of the day when everything is done and I
5 receive all the paperwork back, we head back downstairs. We
6 literally almost do it in reverse. We put them all back into
7 that bullpen, close it up. I will go get my shackles, which I
8 did that day. I got my shackles, went into that other waiting
9 room where we uncuffed them and started setting up all my
10 chains and cuffs to individually lock them up.

11 Me and officer Gunsett were in the room at that time.
12 Officer Cruz and the other officer were watching the inmates
13 that were in the other bullpen. I don't know who I said it to,
14 but I said, OK, we are ready, send the first one in. The first
15 one in was inmate Hawks.

16 Inmate Hawks came into the room. Officer Gunsett had
17 the cuffs, was going to get ready to cuff him. I had the waist
18 chain ready with the locks and the black box, getting ready to
19 hand them over to officer Gunsett after he got the cuffs off --
20 on.

21 THE COURT: This would have been after his medical
22 appointment?

23 THE WITNESS: Yes. Everything was done for the day,
24 your Honor, and we were on our way back to Green Haven.

25 A. Gunsett told Hawks to step up towards him. As Hawks

D7NHHAW2

Mazzella - direct

1 stepped up toward him, he pulled his hands out of his pockets.
2 Officer Gunsett looked at him and he said, What did I tell you.
3 I told you to keep your hands in your pockets until I order you
4 to not. It looked like Hawks was about to put his hands back
5 in when all of the sudden Hawks punched officer Gunsett with
6 his right hand to officer Gunsett's right side of his face.

7 At that moment officer Gunsett started defending
8 himself, swung back at inmate Hawks and there was a little
9 bench right there. While Gunsett was trying to defend himself,
10 I started charging towards him, towards inmate Hawks also.
11 Hawks fell over the bench, fell back onto his back, but as he
12 was on his back he kept swinging at us and trying to get back
13 up using his feet. It was like you saw a turtle on his back
14 just swinging his arms and legs trying to get back up.

15 At that time all we were trying to do is gain control
16 of his arms, get him on his stomach and put his arms behind his
17 back so I can cuff him again, or someone.

18 At that time I tried to grab ahold of his right arm
19 and was trying to turn him over onto his stomach when I didn't
20 realize it, my left arm got near his face when he was turning
21 and that's when he bit me on the left side of my arm. As he
22 started to bite me -- Gunsett saw it and he drove his knee into
23 his head to try to release that bite.

24 We finally got him onto his stomach. I got ahold of
25 his right arm to get behind his back and I believe Gunsett got

D7NHHAW2

Mazzella - direct

1 hold of his other arm, got it behind his back and we finally
2 got the cuffs on him.

3 Q. Did any other officers appear to help you restrain
4 Mr. Hawks?

5 A. Yes. At that time my priority is on that inmate. I know
6 officers were in there, but what they were doing and what was
7 going on, I have no idea.

8 Q. Now, you testified about how as you are shackling the
9 inmates to take them back to Green Haven all the inmates are in
10 the bullpen.

11 A. Correct.

12 Q. And one by one the inmate is taken to this other small room
13 to be reshackled, right?

14 A. Correct.

15 Q. They are not all taken together into that small room to be
16 shackled at the same time, right?

17 A. No. It just keeps it easier so that we have one at a time
18 and nothing gets confused or lost.

19 Q. So there was nothing unusual about Mr. Hawks being taken
20 into that small room by himself to be shackled?

21 A. No.

22 Q. Let's try to give the jury some perspective about the area
23 where this incident happened.

24 Would you turn to, in that binder, Defendants' Exhibit
25 3. There are photographs in there. They are marked

D7NHHAW2

Mazzella - direct

1 Defendants' Exhibit 3-1 through 3-13.

2 Were you able to find the photographs? Let me come up
3 and help you.

4 MS. KIM: May I approach, your Honor?

5 THE COURT: Yes. Sure.

6 So it is like midway through the stack of photos,
7 right?

8 MS. KIM: Yes.

9 THE COURT: Is that what you are looking at?

10 THE WITNESS: There it is. OK.

11 Q. Do any of those photographs depict that small room where
12 this incident happened?

13 A. Yes. The first one, 3-1. That is the waiting room.

14 Q. And that door, where does that door lead to?

15 A. That leads to the outside where our vans would be.

16 THE COURT: So is this where the incident occurred?

17 THE WITNESS: Yes, it is, your Honor.

18 THE COURT: In this room?

19 THE WITNESS: Yes.

20 THE COURT: Is that the bench to the left that you
21 were talking about?

22 THE WITNESS: Yes, it is, your Honor.

23 Q. Are there any other photos that show that room?

24 A. Yes. 3-2.

25 Q. Any other photos?

D7NHHAW2

Mazzella - direct

1 A. A better one is 3-3.

2 Q. Is this where the use of force incident happened?

3 A. Yes, it is.

4 Q. Can you --

5 THE COURT: Before you do, could you just look at 3-4.
6 Is that the bubble you were talking about?

7 THE WITNESS: Yes, it is, your Honor.

8 THE COURT: Do you want to show that?

9 Q. So that is what you call the bubble?

10 A. Yes.

11 Q. There is an officer in there?

12 A. Yes, there is an officer posted in that room.

13 Q. And that officer is watching all the inmates in the
14 bullpen, right?

15 A. Watching all the inmates in the bullpen and controlling all
16 the gates that are down in that area.

17 Q. Are there also officers inside the bullpen watching the
18 inmates?

19 A. Not inside the bullpen. They are waiting on the outside of
20 it.

21 Q. But the officer in that bullpen controls all the gates and
22 so forth, right?

23 A. Correct.

24 Q. So if an incident happened, what would that officer in the
25 bubble do?

D7NHHAW2

Mazzella - direct

1 A. He would probably be the one to call for a response.

2 Q. Let's go back to this photo. Can you describe to the jury
3 where Mr. Hawks was when this use of force incident happened?

4 A. Inmate Hawks was nearer to the bench. He was sitting down
5 towards the middle. Then when he stood up, he was nearer to
6 the bench. Me and officer Gunsett were in between those
7 partitions.

8 Q. So would it be fair to say Mr. Hawks is right here?

9 A. Yeah, about there.

10 Q. And you and officer Gunsett are in this area?

11 A. Correct.

12 Q. Who is doing the actual shackling?

13 A. I had officer Gunsett doing the cuffing while I was holding
14 onto the rest to hand over to him one at a time when he got the
15 cuffs on.

16 Q. So you are handing the shackling equipment to officer
17 Hawks?

18 A. No, Gunsett.

19 Q. Sorry. Officer Gunsett. And officer Gunsett is putting
20 the shackles on Mr. Hawks?

21 A. Correct, but we did not get that far.

22 Q. OK. Do any of those photographs show the bullpen where all
23 the inmates are sitting and waiting?

24 A. Looking from the outside, 3-8.

25 Q. So that's the bullpen where the inmates wait and across

D7NHHAW2

Mazzella - direct

1 from there is that officer in the bubble?

2 A. Yes.

3 Q. So in relation to that bullpen, where is the little room
4 where the use of force incident happened?

5 A. It is literally right on the left-hand side of that inmate
6 waiting sign.

7 Q. Would you look at photograph 3-5. Is that photo taken from
8 inside that small room where the use of force incident
9 happened?

10 A. Correct.

11 Q. Where does that door lead to?

12 A. The one straight ahead that is closed?

13 Q. The one that is opened to the room.

14 A. That leads to the hallway where the bubble is and to the
15 left, literally right to the left is the bullpen.

16 Q. What else is in that immediate area in the RMU basement?

17 A. I'm not quite sure. I do believe they have some type of
18 medical unit down there to the right-hand side, but I'm not
19 sure what it is.

20 Q. Do you recall if, on this photograph, that door was open
21 when this use of force incident happened?

22 A. Yes, that door was open.

23 Q. Photograph 3-12. Does that show the rest of the RMU
24 basement?

25 A. Yes, pretty much.

D7NHHAW2

Mazzella - direct

1 Q. Photograph 3-13, what is depicted in this?

2 A. Those are the elevators where we would take the inmates up
3 to the next floor where they can be seen for their clinic call
4 outs.

5 Q. That is still the RMU basement, right?

6 A. Correct, that is still the RMU basement.

7 MS. KIM: Your Honor, we are not going to use all the
8 photographs but the jury will get all the photographs.

9 THE COURT: OK.

10 Q. Now, when the use of force incident happened, did Mr. Hawks
11 have anything on his left arm or wrist?

12 A. When the use of force happened, no, he had no cast on his
13 hand.

14 Q. What is your understanding as to why Mr. Hawks was taken to
15 Fishkill that day?

16 A. To be seen by the hand doctor.

17 Q. Did he have a cast on when you were taking him to Fishkill?

18 A. Yes, he did.

19 Q. And by the time you and officer Gunsett are shackling him
20 back to be taken back to Green Haven, did he have anything on
21 his left arm?

22 A. No, he did not.

23 Q. Is it your understanding that the cast was taken off that
24 day?

25 A. Yes, it was.

D7NHHAW2

Mazzella - direct

1 Q. Now, other than what you already described, did you use any
2 other type of force on Mr. Hawks?

3 A. No, I did not.

4 Q. Did you punch Mr. Hawks?

5 A. No, I did not.

6 Q. Did you kick Mr. Hawks?

7 A. No, I did not.

8 Q. How would you describe the amount of force that you used on
9 Mr. Hawks that day?

10 A. I used the amount of force to make sure that me and my
11 partners and even Mr. Hawks were safe.

12 Q. Now, other than the punch that you described from officer
13 Gunsett to Mr. Hawks after officer Gunsett himself was punched,
14 did you see anyone else punching Mr. Hawks?

15 A. No, I did not.

16 Q. Did you see anyone else kick Mr. Hawks?

17 A. No, I did not.

18 Q. Did anyone else respond to the incident?

19 A. I know there were people that responded to it. But who and
20 how many, I'm not sure.

21 Q. This wasn't your home facility, right?

22 A. Correct, it is not my home facility.

23 Q. You didn't know all the officers at Fishkill?

24 A. No, I did not.

25 Q. Did you know any sergeants or lieutenants or captains at

D7NHHAW2

Mazzella - direct

1 Fishkill?

2 A. No, I do not.

3 Q. Do you know how the response team came, how they knew that
4 there was something going on?

5 A. That I could not tell you. My focus was on gaining control
6 over that inmate.

7 Q. Now, what happened after Mr. Hawks was finally cuffed and
8 restrained?

9 THE COURT: Could I ask a question before that.

10 THE WITNESS: Yes.

11 THE COURT: So how long did that altercation take,
12 would you estimate, from the time that there was physical
13 contact to the time that he was restrained again?

14 THE WITNESS: It felt like forever, but probably maybe
15 a minute.

16 THE COURT: And before there was any physical contact
17 between either you all and Mr. Hawks, was anything said? Could
18 you tell us what was said by you or by him. Was there any
19 conversation or exchange?

20 THE WITNESS: The only exchange that happened before
21 that fight was Gunsett ordering him to put his hands back in
22 his pockets and waiting for him to tell him when to take them
23 out.

24 Q. So once Mr. Hawks is finally restrained and cuffed, what
25 happened?

D7NHHAW2

Mazzella - direct

1 A. We had to get him immediately off the ground because of
2 positional asphyxia.

3 Q. What does that mean?

4 A. Positional asphyxia is when an inmate is laying on his
5 chest and his hands are behind his back, they start losing the
6 feeling to breathe. It is very big and we are trained on that
7 almost every year. So the second we have him in control, we
8 have to get him off of his chest to make sure he can breathe.
9 That is what we did. We immediately got him off the ground,
10 got him up to the wall, and at that time officers took over
11 control of that inmate.

12 THE COURT: Other officers?

13 THE WITNESS: Other officers, yes.

14 Q. And at that point was Mr. Hawks still resisting?

15 A. Yeah, he was struggling with us, even trying to get him up
16 towards to the wall.

17 Q. And did there come a time when you went back to Green
18 Haven?

19 A. Yes. After I got seen by their medical department and
20 photos were taken, I eventually did get back to Green Haven
21 that day.

22 Q. Did you take the other inmates back to Green Haven?

23 A. No. My day was done taking inmates back and forth right
24 after that fight.

25 Q. And you had no other contact with Mr. Hawks that day,

D7NHHAW2

Mazzella - direct

1 correct?

2 A. No. I haven't had any contact.

3 Q. After you got back to Green Haven, what did you do?

4 A. Started filling out my use of force reports, my misbehavior
5 reports, and my to/froms.

6 Q. Did you fill out something called an employee
7 accident/injury report?

8 A. Yes, I did.

9 Q. Would you look at, in the binder, Defendants' Exhibit 2.
10 It is the second page in that exhibit.

11 A. Yes.

12 Q. Is that the employee accident/injury report that you filled
13 out?

14 A. Yes, it is.

15 MS. KIM: Your Honor, defendants move into evidence
16 Defendants' Exhibit 2.

17 THE COURT: I will allow it.

18 MS. KIM: May I publish to the jury?

19 THE COURT: Sure.

20 (Defendant's Exhibit 2 received in evidence)

21 Q. Which portions of that document did you fill out?

22 A. I filled out the whole entire top. So from facility all
23 the way to my signature.

24 THE COURT: So facility being what, top left corner?

25 THE WITNESS: Correct, No. 1.

D7NHHAW2

Mazzella - direct

1 THE COURT: And then down to where --

2 THE WITNESS: No. 17, signature of employee.

3 THE COURT: That's you?

4 THE WITNESS: That's me.

5 Q. That is your signature there?

6 A. Yes, that is my signature.

7 Q. Where it says statement of employee, what did you write?

8 A. "While CO Gunsett was attempting to shackle inmate Hawks
9 turned and swung at him with his right fist. I assisted
10 restraining inmate."

11 Q. On the bottom it says, facility health services report.

12 No. 24, the findings, do you know who filled that out?

13 A. I do not know. It was probably the nurse that was on that
14 saw me over there.

15 Q. You were examined by a nurse after the use of force
16 incident, right?

17 A. Yes, I was.

18 Q. Here it says, "redness noted both" -- I think that means
19 both -- "sides of neck."

20 Did you have redness to your neck?

21 A. I think I did, yes.

22 Q. And then "abrasions left knee."

23 Did you have abrasions to your left knee?

24 A. Yes, I did.

25 Q. I am going to skip these medical terms. That says, "right

D7NHHAW2

Mazzella - direct

1 upper arm with approximate 3 inch appears to be a human bite
2 mark."

3 Did Mr. Hawks bite you in that area?

4 A. Not my right upper arm but my left upper arm. I don't know
5 why they wrote right, but it was my left upper arm.

6 Q. Sometimes I'm sure they --

7 A. Yeah.

8 Q. Can you show the jury where Mr. Hawks bit you.

9 A. Right about here on the inside of my elbow, between the --
10 almost right around the elbow area on the inside of my left
11 arm.

12 Q. Your skin wasn't punctured, right?

13 A. No, it was not.

14 Q. But you had a bite mark on your arm?

15 A. Yes. It was visible.

16 Q. How did you feel when Mr. Hawks was punching and kicking at
17 you and biting you?

18 A. The adrenaline is going. I'm just trying to make sure we
19 get him secured before it just gets any worse.

20 Q. Did you have any concern for your own safety?

21 A. Oh, absolutely.

22 Q. At that time did you believe that Mr. Hawks intended to
23 cause you physical harm?

24 A. Absolutely he did.

25 Q. Had you ever had any interactions with Mr. Hawks before

D7NHHAW2

Mazzella - direct

1 November 1, 2007?

2 A. Yes, I have.

3 Q. What other interactions did you have with him?

4 A. I took inmate Hawks actually, I believe, three other trips
5 prior to that trip.

6 Q. Where did you take him?

7 A. I took him to the emergency room for that August trip and I
8 also took him to Fishkill for two other trips to see the hand
9 doctor.

10 Q. Are you referring to the August 25, 2007 incident when
11 Mr. Hawks fractured his left wrist?

12 A. Correct.

13 Q. So you took him to the emergency room of an outside
14 hospital?

15 A. Yes. We took him to Putnam emergency room.

16 Q. You heard Mr. Hawks testify that officer Cruz took him to
17 the hospital and then you came later and visited him and
18 threatened him.

19 A. That's absolutely ridiculous. That does not happen.

20 Q. Do officers visit inmates in hospitals?

21 A. No, they do not visit inmates in hospitals.

22 Q. Are you allowed to have outside contact with inmates?

23 A. No, we are not allowed to have outside contact.

24 Q. Now did anything -- withdrawn.

25 On that trip to the hospital on August 25, 2007, who

D7NHHAW2

Mazzella - direct

1 else accompanied you?

2 A. It was me plus two other officers and a sergeant.

3 Q. So there was a sergeant and three officers transporting
4 this one inmate to the hospital?

5 A. Yes.

6 Q. And then after that and before this November 1, 2007
7 incident, you took Mr. Hawks to Fishkill two other times?

8 A. That's correct.

9 Q. And that was between the hospital trip and the incident
10 when this happened, the November 1, 2007 incident?

11 A. Yes, it was. Yes.

12 Q. Do you recall around what time -- when those two other
13 trips to Fishkill happened?

14 A. I cannot recall. I just know that I remember doing those
15 trips. I think one actually was a couple weeks after the
16 August incident.

17 Q. Now during that trip who accompanied you?

18 A. On that trip it was me, another officer and a sergeant.

19 Q. So it was two officers and one sergeant?

20 A. Yes.

21 Q. And how many inmates were you transporting to Fishkill?

22 A. Just him.

23 Q. So it was three correction staff members with this one
24 inmate?

25 A. That is correct.

D7NHHAW2

Mazzella - direct

1 Q. And then the second time after the August 2007 incident,
2 when you took Mr. Hawks to Fishkill, who accompanied you?

3 A. On that one it was just three officers and just him.

4 Q. So it was you and two other officers and just Mr. Hawks?

5 A. Correct.

6 Q. Is that unusual, that only one inmate is being accompanied
7 by more than two officers?

8 A. It depends on the inmate and depends on what the dep of
9 security calls for, what he wants on that trip.

10 Q. So that is the deputy superintendent of security?

11 A. Correct.

12 Q. At Green Haven?

13 A. Yes, it is.

14 Q. Now do you know why on those two other trips to Fishkill
15 Mr. Hawks was the only inmate being transported and there being
16 more than two officers present?

17 A. That would be because of his assault on staff during that
18 August incident.

19 Q. So would it be fair to say that there were extra
20 precautions taken with Mr. Hawks during those two other trips
21 to Fishkill?

22 A. Yes.

23 Q. So then November 1, 2007 incident happened. That was the
24 third trip to Fishkill, right?

25 A. Yes, it was. For me it was with him. Yes.

D7NHHAW2

Mazzella - direct

1 Q. Do you know why on that trip Mr. Hawks wasn't the sole
2 inmate that was transported to Fishkill?

3 A. It is not my decision to make. They decided that -- people
4 above my level decided that he can go out with other inmates.
5 We don't make that decision.

6 Q. Now during the hospital trip on August 2005 -- I'm sorry.
7 Long day.

8 During the hospital trip on August 25, 2007 with
9 Mr. Hawks, did any incidents happen?

10 A. No, no incidents happened.

11 Q. What about those other two occasions when you took
12 Mr. Hawks to Fishkill?

13 A. We never had any problems with him during those times.

14 Q. So nothing happened?

15 A. Nothing happened.

16 Q. There were no use of force incidents?

17 A. Nothing.

18 Q. Were you involved in the August 25, 2007 incident with
19 Mr. Hawks at all?

20 A. No, I was not.

21 Q. What do you know about the August 25, 2007 incident with
22 Mr. Hawks?

23 A. On that day --

24 MR. NOVICH: I am going to object, your Honor.

25 THE COURT: Sustained.

D7NHHAW2

Mazzella - direct

1 Q. On November 1, 2007, were you aware that Mr. Hawks had been
2 in an altercation with officers on August 25, 2007?

3 A. Yes, I was.

4 Q. What did you know about what happened on August 25, 2007?

5 MR. NOVICH: Your Honor, it is the same objection.

6 THE COURT: Overruled.

7 A. From what I knew is that he assaulted two officers on the
8 August date.

9 Q. Who were those officers?

10 A. It was officer Collazzo and officer Melius.

11 Q. What do you know about the injury that officer Melius
12 sustained during that incident?

13 A. From what I know, officer Melius broke his arm and due to
14 complications from that break he eventually could never come
15 back to work.

16 Q. So is he out on disability?

17 A. Yes, he is.

18 Q. He hasn't worked since August 25, 2007?

19 A. He tried to come back for a little bit and ultimately they
20 told him no. They ended up having to put him out on
21 disability.

22 Q. Do you know what happened with officer Collazzo?

23 A. He's working.

24 Q. Do you know if he suffered a broken nose?

25 A. I'm not sure.

D7NHHAW2

Mazzella - direct

1 Q. Is it fair to say that that August 25, 2007 incident with
2 Mr. Hawks, although it didn't involve you, that was a violent
3 incident?

4 MR. NOVICH: Objection. Leading.

5 THE COURT: Sustained.

6 Q. Now, having knowledge of that August 25, 2007 incident on
7 the date that this use of force happened with Mr. Hawks on
8 November 1, 2007, did that affect how you handled your use of
9 force of Mr. Hawks?

10 A. No, it did not.

11 Q. Have you ever testified at a Tier III hearing?

12 A. Yes, I did.

13 Q. Can you tell the jury just generally how Tier III hearings
14 are done.

15 MR. NOVICH: Objection, your Honor.

16 THE COURT: Sustained.

17 Did you have any involvement with Mr. Hawks?

18 THE WITNESS: Yes, I have.

19 THE COURT: At a Tier III hearing?

20 THE WITNESS: Yes.

21 THE COURT: You can ask about that if you want.

22 Q. Did you testify at a Tier III hearing, at Mr. Hawks' Tier
23 III hearing for the November 1, 2007 incident?

24 A. Yes, I did.

25 Q. There was a hearing officer there?

D7NHHAW2

Mazzella - direct

1 A. Actually, I had to do it by phone because at that time I
2 believe inmate Hawks was in Southport correctional and the
3 hearing officer called me at Green Haven and we had to do it
4 over the phone.

5 MS. KIM: Nothing further. Thank you.

6 THE COURT: Counsel.

7 MR. NOVICH: Start now, Judge, or take the lunch
8 break?

9 THE COURT: No, let's keep going for a little while.
10 We will go until 12:45.

11 MR. NOVICH: Just give me a moment, Judge. I am just
12 trying to get set up here.

13 CROSS EXAMINATION

14 BY MR. NOVICH:

15 Q. Good afternoon, officer Mazzella.

16 A. Good afternoon.

17 Q. Just picking up where you left off with Ms. Kim, you said
18 that at Mr. Hawks' disciplinary hearing you appeared by
19 telephone?

20 A. Correct.

21 Q. You weren't there in person?

22 A. No, I was not.

23 Q. That is the same hearing that Mr. Hawks received 60 months
24 in SHU?

25 A. I don't know. We don't ask.

D7NHHAW2

Mazzella - cross

1 THE COURT: So you were the only one on the phone.
2 The others were at the same location?

3 THE WITNESS: Generally what happens is there is a
4 hearing officer that is assigned to that job. That is what his
5 job is across the state. When situations like this happen, the
6 hearing officer that is doing the hearing on the inmate will go
7 to the jail itself --

8 THE COURT: In this case Southport.

9 THE WITNESS: Southport.

10 -- be in front of the inmate to ask the questions or
11 what inmate questions he wants asked.

12 THE COURT: So this would be Mr. Hawks.

13 THE WITNESS: Yes.

14 THE COURT: So they are both at Southport.

15 THE WITNESS: They are both at Southport. And then I
16 would be on speaker phone and where the hearing officer would
17 ask me the questions or say yes or no to the questions that he
18 will allow inmate Hawks to ask.

19 THE COURT: Got it.

20 Q. I'm sorry. The hearing officer is at Southport?

21 A. Yes, he is.

22 Q. And you were at Green Haven?

23 A. Correct.

24 Q. So the hearing officer didn't get to observe your demeanor,
25 directly observe how you present yourself like the jury is

D7NHHAW2

Mazzella - cross

1 doing here today, right?

2 A. No. Yeah.

3 Q. I want to talk to you about August 25, 2007. Your counsel,
4 Ms. Kim, asked you some questions about that. I just want to
5 ask you some more.

6 You had talked about an incident involving officer
7 Melius?

8 A. Melius.

9 Q. Officer Melius is a coworker of yours or was a coworker of
10 yours at Green Haven, is that right?

11 A. Yes, he was.

12 Q. That was true in August of 2007?

13 A. Yes.

14 Q. In fact, you are friendly with officer Melius, correct?

15 A. Yes, I am.

16 Q. And on August 25, 2007, as you described on direct, officer
17 Melius was involved in an altercation with Mr. Hawks, right?

18 A. Yeah. I believe so, yes.

19 Q. And officer Melius, he was injured as a result of his
20 altercation with Mr. Hawks, right?

21 A. Yes.

22 Q. As I understand your testimony, he was injured pretty
23 badly?

24 A. Yes.

25 Q. Mr. Hawks injured someone pretty badly that you were

D7NHHAW2

Mazzella - cross

1 friendly with on August 25, 2007, correct?

2 A. Yup.

3 Q. And you transported Mr. Hawks to -- strike that.

4 Mr. Hawks was also injured as a result of that
5 altercation on August 25, 2007, correct?

6 A. Yes. I'm taking him to the hospital. Medical deemed that
7 he needed to go out.

8 Q. As you just testified you took him to, I believe it was
9 Putnam Hospital?

10 A. Yes, it was.

11 Q. And do you recall if you said anything to Mr. Hawks during
12 that transportation?

13 A. No.

14 Q. You don't recall?

15 A. No, I don't -- there was nothing out of the ordinary. What
16 the orders to do, what we needed him to do, stuff like that.

17 Q. My question was, do you recall what if anything you said to
18 him?

19 THE COURT: Specifically.

20 A. No. No.

21 Q. Ms. Kim asked you some questions, general questions about
22 use of force based on your experience as a corrections officer.
23 Do you remember those questions?

24 A. Yup.

25 Q. And what is appropriate and what is inappropriate. Right?

D7NHHAW2

Mazzella - cross

1 A. Correct.

2 Q. Can we agree that it is an inappropriate use of force to
3 punch an inmate who is sitting on a bench with his hands in his
4 pockets waiting for a correction officer to give him the next
5 set of instructions?

6 A. Can we agree on that?

7 Q. Yes.

8 A. Yes.

9 Q. Can we agree that if that --

10 THE COURT: This is a hypothetical?

11 MR. NOVICH: Yes, your Honor.

12 Q. Can we agree if that situation occurred that the correction
13 officer would be engaged in excessive force?

14 A. Yes.

15 Q. Let's talk about November 1, 2007. You were the officer in
16 charge that day, right?

17 A. Yes, I was.

18 Q. And when Mr. Hawks was transported from Green Haven to
19 Fishkill RMU, his hand was in a cast, right?

20 A. Yes, it was.

21 Q. Now let's discuss what happened after Mr. Hawks came back
22 from seeing the doctors at Fishkill RMU on November 1, 2007.

23 He had to be shackled for the return trip back to
24 Green Haven, correct?

25 A. Correct.

D7NHHAW2

Mazzella - cross

1 Q. And at some point in time he was separated from the other
2 inmates in order to be shackled, right?

3 A. Yes.

4 Q. Now you testified that you took Mr. Hawks on some of the
5 trips. You said you took him on three trips to Fishkill RMU,
6 correct?

7 A. Correct.

8 Q. So there was at least -- if there was another trip, you
9 didn't take him on that one, right?

10 A. Yeah.

11 Q. And you don't know if in that other situation Mr. Hawks was
12 separated or not for the trip back, do you?

13 A. Yeah, I wouldn't have known.

14 Q. Now, you testified that you prepared some type of report
15 when you came back after the assault on November 1, 2007, after
16 you came back from Fishkill RMU.

17 A. Yes.

18 Q. When you came back to Green Haven, you prepared some type
19 of report, right?

20 A. Correct.

21 Q. That was to document what occurred, right?

22 A. Yes.

23 Q. You have got to make sure it is accurate and complete,
24 right?

25 A. Correct.

D7NHHAW2

Mazzella - cross

1 Q. That was that day, right?

2 A. Yes.

3 Q. And defendant Gunsett, he also prepared a similar report,
4 didn't he?

5 A. Yes.

6 Q. Now, you testified on direct examination that Mr. Hawks,
7 when he was in that room alone with you and defendant Gunsett,
8 you testified on direct examination here today that he removed
9 his hands from his pockets, correct?

10 A. Correct.

11 Q. You have previously testified in this case, right?

12 A. In this case?

13 Q. You were deposed?

14 A. In my deposition, yes.

15 Q. You previously testified in this case?

16 A. Yes.

17 Q. Ms. Marcus, my associate who was here yesterday, she took
18 your deposition?

19 A. Yes.

20 Q. There was a court reporter there?

21 A. Yes, there was.

22 Q. You were under oath like the oath you gave here today?

23 A. Yes.

24 Q. And your lawyer was there?

25 A. Yup.

D7NHHAW2

Mazzella - cross

1 MR. NOVICH: Your Honor, permission to approach the
2 witness.

3 THE COURT: Sure.

4 Q. Mr. Mazzella, there should be a deposition transcript, an
5 extra copy there for you. I'm showing you your deposition
6 transcript.

7 A. Uh-huh.

8 Q. Could you please turn to page 30 of your deposition
9 transcript.

10 Are you there with me?

11 A. Yup.

12 Q. Ms. Marcus asked you the following question, under oath, in
13 front of a court reporter, with your lawyer present, starting
14 at line 21:

15 "Now, did you see inmate Hawks take his hand out of
16 his pocket?"

17 And your answer, under oath --

18 THE COURT: Wait a minute.

19 MR. NOVICH: Line 21, Judge, page 30.

20 THE COURT: What you really mean to do is to read him
21 the question that was asked and to read him the answer and ask
22 if he recalls that. Isn't that what you are --

23 MR. NOVICH: Yes, your Honor. I will do that.

24 Q. Question, on page 30, line 21: "Now, did you see inmate
25 Hawks take his hand out of his pocket?"

D7NHHAW2

Mazzella - cross

1 "A. I don't remember."

2 Did I read that correctly?

3 A. Yes.

4 THE COURT: Do you recall that question being asked
5 and that answer being given?

6 THE WITNESS: Yes.

7 Q. Now you also testified on direct examination today that
8 officer Gunsett punched Mr. Hawks. After Mr. Hawks allegedly
9 punched him, officer Gunsett punched him back. You testified
10 to that, didn't you?

11 A. Yes.

12 Q. Would you please turn to page 32. I think it is on the
13 same -- we have the mini -- I believe it is on the same one.
14 Looking at line 4, the question was:

15 "Q. OK. Did you see officer Gunsett hit him at all?

16 "A. I do not remember."

17 Did I read that correctly?

18 A. Yes, you did.

19 THE COURT: And do you recall being asked that
20 question and giving that answer?

21 THE WITNESS: Yes, I do, your Honor.

22 THE COURT: Counsel, do you want to break for lunch
23 now?

24 MR. NOVICH: Sure, Judge.

25 THE COURT: Before we do, let's excuse the witness.

D7NHHAW2

Mazzella - cross

1 We will ask you to come back after lunch. I will tell you
2 when, but you can step down.

3 (Witness excused)

4 THE COURT: I meant to do this a couple of minutes
5 ago, but I will do it now. So we had testimony again with
6 respect to in this case the August 2007 incident. So I want to
7 just read my instruction with respect to those other incidents
8 once again so you have it in your mind.

9 You heard testimony regarding other incidents of
10 assaults involving plaintiff and law enforcement officials.
11 The testimony may only be used for the limited purposes of,
12 one, determining officer Mazzella's motive and intent in
13 restraining plaintiff; two, in determining whether plaintiff
14 had the requisite intent and motive to commit assault and
15 battery on officers Gunsett and Mazzella; three, in determining
16 whether plaintiff's injuries, if any, were proximately caused
17 by any of the defendants' actions; or four, in determining the
18 amount of compensatory damages, if any, that should be awarded
19 to plaintiff.

20 Testimony regarding other incidents in which plaintiff
21 may have been involved may not be considered for the purpose of
22 proving plaintiff's propensity to engage in the altercation
23 described in this case or proving that plaintiff was at fault
24 in the altercation here. Specifically, you may not find that
25 simply because plaintiff was involved in other assaults with

D7NHHAW2

Mazzella - cross

1 other officers on other occasions plaintiff has a propensity
2 for violence and, thus, it is more likely than not that he
3 provoked the altercation and/or committed an assault and
4 battery on defendant officers in this case.

5 So time for lunch. Why don't you come back at a
6 quarter to 2. Today if you wish -- do you want to use the
7 cafeteria in this building? Is that easier for you? It seems
8 like it might be. It is on the eighth floor. But then I am
9 going to ask the lawyers and the parties to not use this
10 cafeteria. Use the one across the street, for example, at 40
11 Foley if you want to do that.

12 We are making good progress. And if you leave
13 everything in place, we will safeguard it for you and we will
14 see you at a quarter to 2.

15 (Jury excused)

16 (Continued on next page)

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D7NHHAW2

Mazzella - cross

1 (Jury not present)

2 THE COURT: I am going to do a conference in another
3 matter. If you might just -- I think the plaintiffs are OK,
4 but if the defendants could make a little room on the end of
5 the table.

6 MS. KIM: Your Honor, I do have an application.

7 THE COURT: You will have to make it later. I am
8 going to do another case first.

9 MR. NOVICH: Judge, the same rule that was in place
10 with Mr. Hawks in terms of not talking during the breaks while
11 he is on the stand is also in place with defendant Mazzella and
12 the other defendants.

13 MS. KIM: I have no intention of --

14 THE COURT: Counsel are all professional and should
15 know that.

16 MR. NOVICH: I wasn't suggesting otherwise.

17 THE COURT: I get it.

18 MR. NOVICH: I just want to make sure.

19 THE COURT: Thanks.

20 So we are going to ask officer Mazzella be back at
21 quarter to 2. Thanks a lot.

22 (Luncheon recess)

23 (Continued on next page)

D7N6HAW3

Mazzella - cross

A F T E R N O O N S E S S I O N

1:45 p.m.

THE COURT: Did you have an application, Ms. Kim?

MS. KIM: Yes, your Honor. I apologize. My intention was to make it at the close of plaintiff's case, but we moved right into the next witness and I didn't get a chance because the jury was seated here. The defendants at this time with your permission pursuant to Rule 50 asks for a directed verdict.

THE COURT: So not to cut you off, you will reserve your right. We'll make the motion later. Let's keep going. The judge can either grant the motion or deny the motion or not rule on the motion and go forward with the case and then you can make it at the end of the case, a comparable motion. That is probably what I would do. Nobody is going to be prejudiced. Let's continue with the next witness.

MS. KIM: Thank you, your Honor.

(Continued on next page)

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Mazzella - cross

1 (In open court; jury present)

2 THE COURT: We'll continue with the cross-examination
3 of Officer Mazzella.

4 THE DEPUTY CLERK: Sir, I would like to remind you
5 that you are still under oath.

6 THE WITNESS: Yes.

7 THE DEPUTY CLERK: Thank you.

8 BY MR. NOVICH:

9 Q. Officer Mazzella, prior to the break I was asking you some
10 questions about your deposition testimony. I want to make sure
11 we're clear. Before you were deposed in this case, when
12 Ms. Marcus asked you questions under oath, you did review the
13 reports; correct?

14 A. Yes, I did.

15 Q. You reviewed your reports and the other reports in the
16 case; right?

17 A. Yes.

18 MR. NOVICH: Your Honor, permission to approach the
19 witness?

20 THE COURT: Sure.

21 Q. I want to direct your attention to Defendant Gunsett's
22 report in this case, which is Defendant's Exhibit 1.

23 I will make it easier for you.

24 A. Sure.

25 Q. Is that Defendant Gunsett's report in connection with the

D7N6HAW3

Mazzella - cross

1 use of force incident on November 1st, 2007 involving
2 Mr. Hawks?

3 A. It looks like it, yes.

4 MR. NOVICH: Your Honor, I would like to admit this
5 document, but at this time I would like to just publish it and
6 put it on the screen for the jury to see.

7 THE COURT: Well, yes. This is Defendant Gunsett's
8 report?

9 MR. NOVICH: Gunsett's report.

10 THE COURT: Sure.

11 Q. This is the report that you testified about before when you
12 and Defendant Gunsett after the incident with Mr. Hawks after
13 you came from Green Haven from Fishkill RMU, you both prepared
14 reports as in the normal course?

15 A. That's correct.

16 Q. You prepared it that day?

17 A. Yes.

18 Q. In this report like Defendant Gunsett, like your report
19 describes the altercation and what exactly happened that day
20 with Mr. Hawks; right?

21 A. Yes.

22 Q. The inmate that is referred in both Defendant Gunsett's
23 report and your report, that inmate is Mr. Hawks; right?

24 A. Correct.

25 Q. Now, in Defendant Gunsett's report that he wrote that day,

D7N6HAW3

Mazzella - cross

1 one of the things that he wrote --

2 THE COURT: That he wrote?

3 MR. NOVICH: That Defendant Gunsett wrote.

4 THE COURT: Right.

5 Q. -- was I responded --

6 THE COURT: If you have a question to ask him, ask it
7 to him. I don't think you have to read another defendant's
8 report to do that.

9 MR. NOVICH: Based on the question I do want to ask
10 him, Judge.

11 THE COURT: No. If you want to elicit some
12 information from him, just do that.

13 MR. NOVICH: Sure.

14 Q. Defendant Gunsett wrote in his report that Mr. Hawks fell
15 to the ground after he punched him; correct?

16 A. According to the report, yes.

17 Q. But your claim is that Mr. Hawks actually fell to the
18 ground because he tripped over a bench; right?

19 A. Yes.

20 Q. Now, in Defendant Gunsett's report he wrote that Mr. Hawks
21 was on his back and he was -- the inmate had to swing both
22 closed fists violently; correct?

23 A. According to his report, yes.

24 Q. And if you turn to the next report, the next one is your
25 report; right?

D7N6HAW3

Mazzella - cross

1 A. Yes.

2 Q. That is the report you prepared that day; correct?

3 A. Correct.

4 MR. NOVICH: Your Honor, permission to publish?

5 THE COURT: Sure.

6 Q. I have a report from you dated November 1st, 2007; right?

7 A. Yes.

8 Q. One of the things that you wrote was, The inmate, meaning
9 Mr. Hawks, was trying to get back up. He was swinging towards
10 me and C.O. Gunsett with closed fists; correct?

11 A. Correct.

12 Q. You said closed fists?

13 A. Correct.

14 Q. You were here when nurse Davis testified that based on his
15 examination --

16 THE COURT: Wait a minute. You can ask the nurse what
17 the nurse thinks and you can ask this witness what he thinks.

18 MR. NOVICH: Sure, Judge.

19 THE COURT: The jury can determine.

20 Q. Now, other than Mr. Hawks, has any other inmate ever
21 alleged that you have engaged in excessive force?

22 MS. KIM: Objection.

23 THE COURT: Sustained.

24 Q. At your deposition do you recall denying under oath that
25 there was a finding --

D7N6HAW3

Mazzella - cross

1 MS. KIM: Objection.

2 THE COURT: Sustained.

3 MR. NOVICH: Your Honor, side bar?

4 THE COURT: Nope. Sustained.

5 Q. Were you ever investigated by the Inspector General's
6 Office?

7 A. Yes, I have.

8 MS. KIM: Objection.

9 THE COURT: Sustained.

10 Q. Did you ever slam another inmate's head --

11 MS. KIM: Objection.

12 THE COURT: Counsel, we already discussed this
13 pretrial. You know what the rulings have been. So let's not
14 keep doing down a path that is not appropriate to go down.

15 MR. NOVICH: I did request a side bar, your Honor, to
16 discuss the issue.

17 THE COURT: Well, you didn't get an okay for that.

18 BY MR. NOVICH:

19 Q. Now, Officer Gunsett, let's talk about your alleged
20 injuries after the altercation. Your left arm?

21 A. I am Officer Mazzella.

22 Q. I am sorry.

23 Officer Mazzella, let's talk about your injuries after
24 the alleged altercation with Mr. Hawks.

25 A. Okay.

D7N6HAW3

Mazzella - cross

1 Q. Your left arm was not bandaged; correct?

2 A. Correct.

3 Q. You weren't bleeding?

4 A. No, I was not.

5 Q. The skin on your left arm was not broken?

6 A. No, it was not.

7 Q. And you continued to work that day, November 1st, 2007;
8 correct?

9 A. Correct.

10 Q. You have been at Green Haven for 16 years?

11 A. Close to it.

12 Q. Have you ever heard anyone refer to it as gladiator school?

13 A. No.

14 MR. NOVICH: No further questions, your Honor.

15 THE COURT: Anything further?

16 MS. KIM: Just a few.

17 REDIRECT EXAMINATION

18 BY MS. KIM:

19 Q. Officer Mazzella, you heard Mr. Hawks testify that at some
20 point you threatened him. You said, "I am going to get you,"
21 and then after this incident you said, "I told you I would get
22 you." Did you ever say anything like that to Mr. Hawks?

23 A. No, I did not.

24 THE COURT: Either before or after?

25 THE WITNESS: Either before or after, your Honor.

D7N6HAW3

Mazzella - redirect

1 Q. Did you do anything to Mr. Hawks in retaliation for
2 whatever happened on August 25th, 2007?

3 A. No, I did not.

4 MS. KIM: I have no more questions.

5 THE COURT: We'll excuse the witness and ask for the
6 next defense witness.

7 (Witness excused)

8 THE COURT: Who is the next witness?

9 MS. KIM: Defense calls Officer Gunsett.

10 THE DEPUTY CLERK: Sir, if you could remain standing
11 for a moment and raise your right hand, please.

12 CLIFFORD K. GUNSETT,

13 called as a witness by the Defendants,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. KIM:

17 Q. Good afternoon, Officer Gunsett.

18 A. Good afternoon.

19 Q. Are you currently employed?

20 A. Yes.

21 Q. What is your employer?

22 A. New York State Department of Corrections.

23 Q. Where do you work currently?

24 A. Green Haven Correction Facility.

25 Q. How long have you worked at Green Haven?

D7N6HAW3

Gunsett - direct

1 A. Just over nine years.

2 Q. When did you start working for DOCs?

3 A. 2004.

4 Q. What is your current position at Green Haven?

5 A. Correction officer for New York State.

6 Q. And was Green Haven your first facility when you started
7 working for DOCs?

8 A. Yes.

9 Q. Do you have any other duties other than your general duties
10 as a Corrections officer at Green Haven?

11 A. I am a member of the Green Haven CERT team.

12 Q. What is the CERT team?

13 A. Corrections Emergency Response Team.

14 Q. What does the CERT team do?

15 A. For lack of a better term, it is basically what is S.W.A.T.
16 is to police, but we're in a Corrections in a correctional
17 setting.

18 Q. So what things do CERT officers do that regular officers
19 don't necessarily do?

20 A. We get more specialized training in tactical scenarios,
21 cell extractions. They kind of use us for a myriad of things.
22 They sent us down for a couple years ago for the hurricane and
23 we were protecting, I guess you would say, one of the clinics
24 that they set up for elderly people. They use us for, like I
25 said, a myriad of different things.

D7N6HAW3

Gunsett - direct

1 Q. Are you called when things happen in other facilities?

2 A. We can be, yes. If there was a serious situation in a
3 facility, they can call. There are certain teams at certain
4 states. So they can call us, yes.

5 Q. Where were you born?

6 A. Walkill, New York.

7 Q. Where is that?

8 A. It is about an hour and a half north of here.

9 Q. Where did you go to high school?

10 A. Walkill Senior High School.

11 Q. Did you go to college?

12 A. Yes.

13 Q. Did you receive a degree?

14 A. No.

15 Q. How many semesters did you attend?

16 A. I went for education. I had one more semester of student
17 teaching when I left.

18 Q. That is when you started working with DOCs?

19 A. No. No. I left there and started doing some substitute
20 teaching along with working for a pool company installing
21 in-ground pools.

22 Q. Do you have any children?

23 A. Yes.

24 Q. How old are they?

25 A. My daughter is seven. My son is nine.

D7N6HAW3

Gunsett - direct

1 Q. So November 2007 you had your daughter, right, and she was
2 a newborn?

3 A. She was, yes.

4 Q. What training, if any, did you receive to become a
5 Corrections officer?

6 A. I attended the academy, training academy.

7 Q. How long did you attend the academy?

8 A. That was eight weeks.

9 Q. Did you receive training at the academy as to how and when
10 to use force on an inmate?

11 A. Yes.

12 Q. Generally what were you taught?

13 A. You use force to, you know -- as much force is necessary to
14 get the inmate to comply with lawful direction.

15 Q. Would it be fair to say that an officer should use as much
16 reasonable force as necessary to subdue a combative inmate?

17 A. Yes.

18 Q. For what reasons are you allowed to use force on an inmate?

19 A. To defend yourself, to defend a third person, property,
20 gross obstruction of property, escape.

21 Q. I would like to direct your attention to the November 1st,
22 2007 use of force incident.

23 A. Okay.

24 Q. Were you working at Green Haven then?

25 A. Yes.

D7N6HAW3

Gunsett - direct

1 Q. What shift you were on?

2 A. 7:00 to 3:00.

3 Q. 7:00 a.m. to 3:00 p.m.?

4 A. Yes.

5 Q. What was your assignment for that day?

6 A. To transport inmates to the Fishkill Regional Medical Unit.

7 Q. Was that your regular job?

8 A. No.

9 Q. Had you worked as a transport officer prior to that day?

10 A. I don't remember. I don't recall if I had.

11 Q. And how did you become assigned to be the transportation
12 officer on November 1st, 2007?

13 A. You know what, I honestly don't know. I had a number of
14 different bids. There is a job bid and you can bid on a job.
15 I had, like, maybe seven or eight bids since I have been there.
16 I don't remember what my bid was. I don't know if I had a bid
17 where I had a miscellaneous day. I don't know if I was on
18 overtime. I don't know if I was a resource officer where you
19 don't have a job and the sergeant assigns you to a job for that
20 day. I don't recall back then if I had -- what my bid was if I
21 had a bid.

22 Q. So if you were a resource officer, you would fill in for
23 any gaps in coverage where ever you are needed in the facility?

24 A. Right. I would get there that morning at 6:40. I have to
25 report to the chart sergeant and wherever they need you, they

D7N6HAW3

Gunsett - direct

1 put you in a slot whether it be a cellblock, tower or trip or
2 wherever.

3 Q. Now, when you say "bid," we would know it has a regular
4 assignment?

5 A. Right. Right. Something that like you do every single day
6 and that is your job. So every day you report to the jail you
7 know exactly what you do. You do the same job every day of the
8 week. That is what a job bid would be.

9 Q. What are the different bid jobs that you held at Green
10 Haven?

11 A. I've worked -- there are corridors in the job where I
12 worked the corridors. I have worked SHU. I have worked A
13 Block, B Block, J Block. Offhand that is all I can think of.

14 Q. Now, before November 1st, 2007, had you had any
15 interactions with Mr. Hawks?

16 A. No. Not that I can remember anyway.

17 Q. Did you know who Mr. Hawks was before that day?

18 A. Not that I can remember, no.

19 Q. How many inmates are at Green Haven?

20 A. I think it is roughly over 2,000.

21 Q. Was that the case back in November 2007?

22 A. Yes.

23 Q. Is it fair to say that back in November 2007 you came into
24 contact with many inmates?

25 A. Yes. Absolutely.

D7N6HAW3

Gunsett - direct

1 Q. Hundreds of inmates?

2 A. Yeah. I mean, yes.

3 Q. Thousands of inmates?

4 A. Yes. Yes. Thousands in the course of your duties.

5 Q. Would you take us through what happened on November 1st,
6 2007 from the time that you left Green Haven to the time that
7 the incident with Mr. Hawks happened as best as you can
8 remember?

9 A. Yeah. Yeah. We arrived at Fishkill and pulled the vans up
10 and go in through that door into that little room where you
11 remove the shackles. Once we get into that room, they shut the
12 door and then all the inmates are in that room. I somewhat
13 remember asking Mr. Hawks to step aside so that the other
14 inmates could be unshackled due to the fact that he was SHU
15 inmate and my logic on that is usually an inmate is in SHU for
16 a problem. It doesn't have to be a violence problem, drugs, it
17 could be he might be notorious weapons type guy. It could be
18 he assaulted other inmates, staff members. It could be
19 anything. My theory is if there is an inmate that is a
20 disciplinary type problem, I will leave him shackled last while
21 I unshackle all the other inmates so there is the least amount
22 of an issue.

23 When I asked him to step aside, he was visibly
24 aggravated. He was huffing and puffing and talking under his
25 breath and whatever he said he said. Anyway I got the shackles

D7N6HAW3

Gunsett - direct

1 off the inmates and told him to put his hands in his pockets.
2 Every time I gave him a direction, it was huff and puff. He
3 seemed to be generally upset.

4 So once we got all the shackles off, we went into the
5 other bullpen that we talked about. Once they were ready for
6 us to come upstairs, we went upstairs. Then they go into the
7 larger bullpen up there and wait for their medical procedure,
8 see their doctor, or what have you. Once they are all done
9 with that, we get them all back together, bring them back down
10 into the bullpen and then we shackle them and we take them back
11 out to the van and leave to head back. So we brought Inmate
12 Hawks in. I believe I was in the room with Officer Mazzella
13 when he came into the room to be shackled. The shackle setup
14 is all connected with padlocks. So in order to take that setup
15 apart to apply it to the inmate, you have to unlock the
16 padlocks and take the whole thing apart. So you have all the
17 separate pieces, block box, chain, padlocks.

18 Officer Mazzella was doing that and Mr. Hawks was
19 seated on the bench there, but he was pretty much done getting
20 everything undone I told Inmate Hawks to stand up and he took
21 his hands out of his pockets. I told him for whatever amount
22 of time that was, I told him, Put your hands back in your
23 pockets. I said something to that effect. That is when I
24 think I had glanced over to grab a piece of the equipment from
25 Mazzella and that is when I get hit. He punched me in the face

D7N6HAW3

Gunsett - direct

1 with as fist and then immediately I just responded and hit him
2 back.

3 Like you heard, there is a bench like right behind his
4 knees. It was the effect of basically if you are standing and
5 somebody kneels down behind you, you push them and you fall
6 over. When I hit him, he went over that bench and as soon as
7 he hit the ground, he started to come back swinging at which
8 point I pushed him back down because subduing an inmate on the
9 floor is lot easier than to stand up. If you can get him down
10 to the ground and keep him in the area, it is safer.

11 So I had him down on the ground and we were trying to
12 give him directions to stop resisting, roll over on your
13 stomach. He was throwing wild hands at us, throwing punches at
14 us. At some point in trying to gain control of his arms as I
15 looked down, I realized that he had his mouth on Officer
16 Mazzella's arm biting him. At that time as I had my hands tied
17 up with him, I was up. My knee was and I drove my knee down
18 into his forehead to release the bite, which it did. Once he
19 released the bite, we were able to get him over on his stomach,
20 get his hands up on his back, mechanical restraints were
21 applied and they ushered us off to see medical.

22 Q. Now, other than what you already described, you struck
23 Inmate Hawks in the face after he punched you, he fell over,
24 then you saw him bite Officer Mazzella and you took a knee to
25 his forehead?

D7N6HAW3

Gunsett - direct

1 A. Yep.

2 Q. Other than that and trying to gain hold of his arms, turn
3 him over, did you use any other type of force on Mr. Hawks?

4 A. No.

5 Q. Other than that initial strike to Mr. Hawks' face, did you
6 punch Mr. Hawks again?

7 A. Absolutely not.

8 Q. Did you kick Mr. Hawks?

9 A. Absolutely not.

10 Q. How would you describe the amount of force that you used on
11 Mr. Hawks that day?

12 A. I used the force that I needed to just get that situation
13 under control, get him rolled over on his stomach and get him
14 secured so he was no longer a threat.

15 Q. Officer Mazzella was in the room; right?

16 THE COURT: Sorry.

17 Q. Officer Mazzella was in the room with you?

18 A. Yes.

19 Q. Did any other officers respond to the incident?

20 A. Yes. I believe Officer Cruz responded and then from
21 there -- honestly, when I was dealing with the inmate
22 physically, you don't really know exactly who is coming. You
23 hear somebody -- there was obviously a response called because
24 in that type of situation, it's very distinct sound. I mean
25 once that response is called, all the members from the response

D7N6HAW3

Gunsett - direct

1 team they arrive. You imagine that these guys have keys on
2 their hips. You hear keys jingling. He hear feet hitting the
3 floor. You hear people running from different areas. That is
4 what I heard. There were hands in there and people are trying
5 to get the guy handcuffed and stuff. That is why I assumed the
6 whole response team that had been called.

7 Q. Did you see anyone else punch Mr. Hawks?

8 A. No, I did not.

9 Q. Did you see anyone else kick Mr. Hawks?

10 A. Absolutely not.

11 Q. What happened once Mr. Hawks was finally restrained?

12 A. I am sorry?

13 Q. What happened once Mr. Hawks was finally restrained and
14 cuffed?

15 A. We were leading by the responding officers. The responding
16 officers take control of the inmate and they send us to BC by
17 medical right away for any injuries we may have.

18 Q. Were you seen by a nurse?

19 A. Yes.

20 Q. Did you fill out an employee accident, slash, injury
21 report?

22 A. Yes, I did.

23 Q. In that binder would you look at Defendant's Exhibit 2. It
24 is that first page.

25 A. I have it.

D7N6HAW3

Gunsett - direct

1 Q. Is that the employee accident, slash, injury report that
2 you filled out?

3 A. Yes.

4 MS. KIM: May I publish that, your Honor?

5 THE COURT: Sure.

6 MS. KIM: This is Defendant's Exhibit 2.

7 Q. Officer Gunsett, which part of that document did you fill
8 out?

9 A. I filled out the top section from the top left corner, No.
10 1 one, facility, down to No. 17, signature of employee.

11 Q. Where it says "statement of employee," what did you write?

12 A. Attempting to shackle inmate Hawks -- 04B24A1. Inmate
13 Hawks turned and swung at me with his right fist striking me in
14 the face. I took inmate to floor.

15 Q. 04B24A1 is what?

16 A. It's PIN number, Department identification number.

17 Q. Do you see the bottom half of that document?

18 A. Yes.

19 Q. Do you know who filled that part out?

20 A. I am assuming that medical staff, the nurse.

21 Q. So it is a little bit hard to read. I am going to skip the
22 first report. Areas noted, superior to left eye, no open area
23 but redness. Redness areas. Both forearms. Old abrasions.
24 And something abrasions.

25 Then it says FROM with pain or complained at this

D7N6HAW3

Gunsett - direct

1 time. It says, All areas cleansed with H2O and Benodine.

2 Do you recall having that type of medical treatment?

3 A. Yeah. Honestly it was a long time ago so I don't remember
4 exactly, you know, how I was treated but I remember, you know,
5 they treated me. I don't remember exactly what they did.

6 Q. You didn't have serious injuries; right?

7 A. No. No.

8 Q. During this use of force event, did you believe that
9 Mr. Hawks intended causing you physical harm?

10 A. Absolutely.

11 Q. He punched you in the face; right?

12 A. Yes.

13 Q. Then he kept fighting with you and trying to hit you and
14 kick you?

15 A. Yes.

16 MS. KIM: Thank you. No more questions.

17 THE COURT: Counsel.

18 MR. NOVICH: Yes, Judge.

19 CROSS-EXAMINATION

20 BY MR. NOVICH:

21 Q. Good afternoon, Officer Gunsett.

22 A. Good afternoon.

23 Q. Let's discuss your knowledge of Mr. Hawks before
24 November 1st, 2007. Before November 1st, 2007 you didn't know
25 who he was; right?

D7N6HAW3

Gunsett - cross

1 A. No, I didn't. I cannot say that I did.

2 Q. Had you heard of him?

3 A. I cannot say that I did.

4 Q. To your knowledge did anyone working with you on
5 November 1st know Mr. Hawks?

6 A. Not to my knowledge, no.

7 Q. Now, on November 1st, 2007 you participated in the
8 transport of Mr. Hawks and other inmates from Green Haven to
9 the basement of the Regional Medical Unit at Fishkill; right?

10 A. Yes.

11 Q. Were you the transporting officer at the time?

12 A. That day I was a transporting officer. I don't know -- do
13 you mean regularly?

14 Q. Yes.

15 A. It wasn't my bid job, no.

16 Q. Did you receive any annual training on transporting
17 inmates?

18 A. No. You don't receive any annual training on transporting
19 inmates.

20 Q. And you don't remember receiving any training on
21 transporting inmates as part of your initial training when you
22 became a Corrections officers, do you?

23 A. Yeah. In the academy I believe they touch on shackles.

24 They go through a lot of stuff in the academy. I don't
25 distinctly remember the transportation aspect, but I remember

D7N6HAW3

Gunsett - cross

1 learning about the shackles and how a shackle is set up and
2 things like that, which goes along with transportation.

3 Q. Let me make sure to repeat the question again.

4 A. Yes.

5 Q. The question was: You don't remember receiving any
6 training on transporting inmates as part of your initial
7 training when you became a Corrections officer, do you?

8 A. Like I said, in the academy you go through a whole thing, a
9 whole regimen of two-month training. That was back if 2004,
10 nine years ago. So I don't remember every little bit of
11 training that we did at the academy. I know that we learned
12 about the shackle set up and things. As far as actual delving
13 in the transportation training, I cannot say that I remember
14 all the way back to the academy.

15 Q. Now, on November 1st, 2007, when you were transporting
16 Mr. Hawks, was there a sergeant, was there any sergeant who was
17 in charge in overseeing the transport?

18 A. No.

19 Q. And this was the first and only time you had ever
20 transported an inmate to Fishkill RMU; correct?

21 A. I believe so.

22 Q. Let's talk about what happened when you arrived at Fishkill
23 RMU in 2007. You got the inmates out of the van; right?

24 A. Right.

25 Q. You brought them into a little room?

D7N6HAW3

Gunsett - cross

1 A. Yes.

2 Q. The inmates were altogether; right?

3 A. Yes.

4 Q. You began unshackling the inmates in this little room;
5 correct?

6 A. Right.

7 Q. You told the inmates to put their hands in their pockets;
8 correct?

9 A. Once they were unshackled?

10 Q. Yes.

11 A. Yes.

12 Q. Did you know why Mr. Hawks was going to the medical unit
13 that day?

14 A. Not that I can remember, no.

15 Q. You did not know if Mr. Hawks had any visible injuries, do
16 you?

17 A. I don't recall.

18 Q. You didn't ask Mr. Hawks why he was receiving medical
19 treatment that day, did you?

20 A. Not that I can remember, no.

21 Q. And at some point after you arrived at Fishkill RMU on
22 November 1st, 2007, you unshackled Mr. Hawks; right?

23 A. I don't recall who if it was me that unshackled him when we
24 first got there. I don't remember.

25 Q. At some point he was unshackled though after you arrived;

D7N6HAW3

Gunsett - cross

1 right?

2 A. Yes.

3 Q. And either you or some other Corrections officer told him
4 to put his hands in his pockets; right?

5 A. Yes.

6 Q. And it is your testimony that he didn't want to do that?

7 A. Sorry.

8 Q. He didn't want to do that, did he?

9 A. I can't speculate what he wanted to do. I know it was --
10 it seemed like he was angry.

11 Q. He was upset?

12 A. Yeah.

13 Q. About putting his hands in his pocket?

14 A. Yep.

15 Q. He asked you why he had to put his hands in his pockets?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. I believe so.

19 Q. He was huffing and puffing that morning, that is how you
20 described it; right?

21 A. Yep. Yes.

22 Q. You believed he was giving you a hard time; correct?

23 A. Yeah. I mean, I don't know giving me a hard time, but just
24 general, like I said before he seemed angry at every direction
25 he was given.

D7N6HAW3

Gunsett - cross

1 Q. You assumed that he was battling with you; right?

2 THE COURT: He was what?

3 Q. Battling with you; correct?

4 A. I wouldn't say he was battling. It was a constant battle
5 with him to just -- you know, when I said stand over there, it
6 was huffing and puffing, and then put your hands in your
7 pockets. It seemed like every direction I gave him was a
8 constant battle to get him to comply with directions.

9 Q. Then after Mr. Hawks put his hands in his pockets, he went
10 upstairs to see the medical providers; correct?

11 A. I believe they went to the other bullpen, larger bullpen
12 first and once they were ready for us upstairs then we went
13 upstairs.

14 Q. He is brought to different areas before he actually saw the
15 medical providers?

16 A. Right. Once we unshackle the inmates into that area, they
17 go into the larger area. We put our restraints away and then
18 we move on. Once they are ready for us, then we'll move to the
19 next area.

20 Q. He was unshackled; right?

21 A. Yes.

22 Q. To your knowledge were there any altercations between
23 Mr. Hawks and the medical staff that day?

24 A. Not to my knowledge, no.

25 Q. Now, after he was done with his physical therapy, the

D7N6HAW3

Gunsett - cross

1 inmates that was approximately 15 or 20 minutes or so?

2 A. I couldn't tell you.

3 Q. After the inmates came back down from seeing their medical
4 providers, they came back downstairs?

5 A. I am sorry. After they seen their medical providers?

6 Q. Yes.

7 A. Yes. They came back downstairs.

8 Q. Mr. Hawks was shackled first?

9 A. Yes. We attempted to shackle him first.

10 Q. You brought him alone into a separate room to be shackled?

11 A. Right.

12 Q. You separated Mr. Hawks from the other inmates?

13 A. I can't say that I separated him. I don't remember if I
14 was -- I think I was in that room already.

15 Q. Mr. Hawks was separated from the other inmates; correct?

16 A. Yes.

17 Q. In that room where Mr. Hawks was to be shackled, it was
18 just you, Mr. Hawks and Officer Mazzella; correct?

19 A. I believe so.

20 Q. Mr. Hawks was sitting on the bench waiting to be shackled;
21 correct?

22 A. Yes.

23 Q. Mr. Hawks was waiting for instructions from you; right?

24 A. Yeah. I would assume so, yeah.

25 Q. Was he resisting when he was sitting on that bench waiting

D7N6HAW3

Gunsett - cross

1 for instructions from you?

2 A. No.

3 Q. You told him to stand up; right?

4 A. Yes.

5 Q. He stood up when you told him to stand up?

6 A. Yes.

7 Q. He complied with your command?

8 A. Are you asking me?

9 Q. Yes.

10 A. Yes, he did.

11 Q. You testified on direct examination I believe that you
12 ordered him to put his hands back in his pockets and that is
13 when he punched you; correct?

14 A. Yes.

15 Q. You gave a deposition in this case, didn't you?

16 A. Yes.

17 Q. And at your deposition you were less than certain when
18 Mr. Hawks actually --

19 THE COURT: Did you want to ask a question from the
20 deposition?

21 MR. NOVICH: Yes, I do, Judge.

22 Q. Didn't you testify at your deposition that after you told
23 Mr. Hawks to put his hands in his pocket that is when you
24 believe he hit you?

25 MS. KIM: Objection, your Honor.

D7N6HAW3

Gunsett - cross

1 THE COURT: Sustained. Read the question and read the
2 answer from the deposition and then ask a question about that.

3 MR. NOVICH: Sure.

4 May I approach the witness?

5 THE COURT: Sure.

6 Q. If you could turn to page 20 of your deposition, you were
7 asked the question earlier about what happened and you were
8 giving your description on page 20.

9 A. Okay.

10 Q. On the middle of the page starting at line 11 did you say,
11 Do you recall saying: I told him to stand up, he stood up, he
12 took his hands out of his pockets. I told him to put his hands
13 back in his pockets and that is when I believe he struck me in
14 the face?

15 A. Yes.

16 Q. Now, on direct examination you testified that Mr. Hawks
17 punched you, you punched him back and he fell down to the
18 ground; right?

19 A. Yes.

20 Q. You testified that he fell to the ground; correct?

21 A. Right. Like I said, when I struck him, he -- what I
22 believe happened was that he toppled back over that bench that
23 was behind him about knee-high and fell to the ground. Yep.

24 Q. Didn't you previously state that you took him to the floor?

25 A. Yeah. That is a statement we use for all uses of force and

D7N6HAW3

Gunsett - cross

1 a lot of times we'll do that to kind of in our own -- you know,
2 like if I am working Green Haven, I will write the report as I
3 took the inmate to the floor. That is what we're trying to
4 accomplish, to take the inmate to the floor. Instead of saying
5 word for word that the inmate struck me and write on paper, I
6 believe at that time he fell over a bench that was behind him.
7 We just say we took the inmate down to the floor and got
8 control. At the time it wasn't, you know -- this wasn't -- to
9 me this was -- you know, it wasn't a major incident because
10 there was no major injuries and he struck me in the face, I
11 struck him, with got him to the floor, we cuffed him. After
12 that time I never really gave it a thought until it was brought
13 up with this -- this case.

14 Q. So today the testimony was you punched him and he fell to
15 the ground; right?

16 A. Right. I struck him and then I believe he tripped over --
17 went backwards over that bench.

18 Q. And on November 1st you wrote, I took inmate to floor.

19 A. Right. That medical form, that is when they are asking for
20 the statement of employee. It is a brief synopsis of what
21 happened. In your to/from that I wrote, that is when you go
22 into detail as to what happened. So with that medical they ask
23 you a brief description real quick as to what happened so they
24 have an idea of what happened.

25 Q. After the altercation with Mr. Hawks, you prepared an

D7N6HAW3

Gunsett - cross

1 incident departmental communication report; right?

2 A. Yes.

3 Q. You prepared this report on November 1st, 2007; correct?

4 A. Yes. That's the same day of the incident?

5 Q. Excuse me?

6 A. That is the same day of the incident?

7 Q. Yes. This report is about your altercation with Mr. Hawks
8 on November 1st; right?

9 A. Yes.

10 Q. The inmate in the report that you referred to, that is
11 Mr. Hawks; correct?

12 A. Yes.

13 Q. In that report didn't you write that the inmate began to
14 swing --

15 MS. KIM: Objection.

16 THE COURT: Overruled.

17 Q. Didn't you write that the inmate began to swing both closed
18 fists violently?

19 A. Yes, I did.

20 Q. You said both of Mr. Hawks' fists were closed, didn't you?

21 A. Yes.

22 Q. Now, after the altercation was over and Mr. Hawks was
23 handcuffed, he was examined by medical personnel in the
24 hospital; right?

25 A. I have no idea. Once the inmate was restrained, they

D7N6HAW3

Gunsett - cross

1 ushered us off to medical and we never saw each other again.
2 Once he was standing against the wall by resisting officers,
3 they took us to a separate area to be seen by medical. I
4 didn't -- never saw him again after that.

5 Q. You testified on direct that the only strikes on Mr. Hawks
6 that day were your punches to his face?

7 A. Yes.

8 Q. And your knee to his forehead; correct?

9 A. Yes.

10 Q. You testified on directed, too, that there was no other use
11 of force; right?

12 A. Well, the only thing is a use of force.

13 Q. My question to you, sir, was --

14 MS. KIM: Objection.

15 Q. -- you testified in response to your counsel's question
16 there was no other use of force to Mr. Hawks; correct?

17 A. I didn't strike the inmate.

18 Q. That is not what I asked you.

19 A. I cannot answer that yes or no.

20 Q. What I asked you was you testified today --

21 THE COURT: Do you want to read back the testimony?

22 MR. NOVICH: I would just like an answer to my
23 question, Judge.

24 THE COURT: You have to be precise if you are talking
25 about prior testimony. You have to have the prior testimony.

D7N6HAW3

Gunsett - cross

1 You can have a readback if you want.

2 MR. NOVICH: My notes reflect that.

3 THE COURT: My notes, who knows, notes. If you want
4 to hear what was asked and answered, you need to talk to the
5 court reporter.

6 MR. NOVICH: Sure.

7 THE COURT: Let's do that. Do we want to take a break
8 for the court reporter to find that?

9 MR. NOVICH: Sure.

10 THE COURT: We'll take five minutes.

11 (Jury excused)

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D7NHHAW4

Gunsett - cross

1 (Jury present)

2 THE DEPUTY CLERK: You are still under oath.

3 THE WITNESS: OK.

4 BY MR. NOVICH:

5 Q. Officer Gunsett, you punched Mr. Hawks in the face and you
6 kneed -- on the right side of the face, right?

7 A. I believe so. I believe it was the right side of the face.

8 Q. You punched him in the face on the right side and you kneed
9 him in the forehead, correct?

10 A. Yes.

11 Q. There were no other strikes by you?

12 A. There were no other strikes, no.

13 Q. There were no other strikes by any of the officers?

14 A. No.

15 Q. So no one punched or kneed or kicked Mr. Hawks on the top
16 of the head, correct?

17 A. No.

18 Q. Is that a yes?

19 A. That's correct. Nobody did.

20 Q. Nobody punched or kicked Mr. Hawks on the back of his head,
21 correct?

22 A. No.

23 Q. His neck?

24 A. No.

25 Q. Nobody struck Mr. Hawks on his arms, correct?

D7NHHAW4

Gunsett - cross

- 1 A. No.
- 2 Q. That's yes?
- 3 A. Nobody struck him on the arms.
- 4 Q. Did anyone strike him on the inner part of his left knee?
- 5 A. No.
- 6 Q. Did anyone strike him on his upper chest?
- 7 A. During my use of force, I pushed him back down to the
- 8 ground with both of my hands on his chest to keep him down to
- 9 the ground.
- 10 Q. Did you strike him?
- 11 A. I pushed him with both my hands to his chest down to the
- 12 ground.
- 13 Q. You didn't punch him in the chest, did you?
- 14 A. No. I pushed him with both of my hands.
- 15 Q. When you punched him in the face, did you punch him on the
- 16 right side of the face, from ear to nose, did you punch him on
- 17 this side of the face, or did you punch him under the eye?
- 18 A. I can't recall exactly where the punch landed.
- 19 Q. Did anyone else punch him under the eye?
- 20 A. No.
- 21 Q. Did anyone strike him in the elbow?
- 22 A. No.
- 23 Q. Did anyone strike him on his left arm?
- 24 A. No.
- 25 Q. Did anyone strike him on his left wrist?

D7NHHAW4

Gunsett - cross

1 A. No.

2 Q. Did anyone strike him on his left hand?

3 A. No.

4 Q. Now you claim that Mr. Hawks assaulted you, correct?

5 A. Yes.

6 Q. And before he allegedly assaulted you, before he attacked
7 you allegedly, he didn't say anything to you, did he?

8 A. No.

9 Q. And your testimony on direct was that you were actually
10 glancing over at officer Mazzella at the time that Mr. Hawks
11 struck you, right?

12 A. Right. I believe I was -- I believe I was grabbing one of
13 the, either the cuffs or one of the pieces of equipment from
14 him to apply to the inmate.

15 Q. So you were busy doing something else when Mr. Hawks
16 allegedly struck you, correct?

17 A. Not exactly. No.

18 Q. You weren't grabbing that piece of equipment?

19 A. I wouldn't say I was busy doing something else. I kind of
20 keep the inmate in my peripheral. I am not going to take my
21 eyes completely off of the inmate. As I keep him in my
22 peripheral, I am glancing for the, you know, piece of equipment
23 that I was getting.

24 Q. Your testimony was you glanced over at Mr. Hawks while you
25 were getting a piece of equipment from officer Mazzella,

D7NHHAW4

Gunsett - cross

1 correct?

2 A. I glanced over at officer Hawks?

3 Q. I'm sorry. You glanced over at Mr. Hawks while you were
4 grabbing a piece of equipment from officer Mazzella, correct?

5 A. I don't recall if I said that I glanced at inmate Hawks. I
6 don't know. Normally, like I said, I try to keep the inmate in
7 my peripheral if I am grabbing something from another officer
8 just cause I'm not going to take my, completely turn my back to
9 the inmate.

10 Q. Were you expecting him to punch you?

11 A. No. No, I can't say that I was. It's always, in our
12 nature of work, it is always a possibility.

13 Q. So he sucker punched you, right? That is what you claim.

14 A. That's what I would call it, right.

15 Q. He coldcocked you, right?

16 A. Right.

17 Q. But you didn't require any medical attention, did you?

18 A. If I remember right, I might have got like an icepack to
19 the eye maybe. Like I said, it was a long time ago and I
20 didn't have like a broken eye or something like that or
21 anything like that. But I think they put, you know, ice on my
22 eye and that might have been if it, if I recall.

23 Q. Your counsel already showed you your employee accident
24 report which was marked as Exhibit D2. You already testified
25 on direct that you signed this that day, correct?

D7NHHAW4

Gunsett - cross

1 A. Yes.

2 Q. Yes?

3 A. Yes.

4 Q. And do you see box 15, employee required medical attention?

5 A. Yes.

6 Q. The box that is checked is no?

7 A. Right.

8 Q. You signed that document on the same day?

9 A. Yes.

10 Q. After the attack, right?

11 A. Yes.

12 Q. You were not provided with first aid, were you?

13 A. Just maybe an icepack on my eye. Maybe that was it.

14 Q. And even though you claim that Mr. Hawk sucker punched you,
15 that he coldcocked you, you were not provided with medical
16 attention, were you?

17 A. Yes. As soon as that incident was done, we went to go see
18 medical.

19 Q. In fact, you didn't remember at your deposition, you didn't
20 remember sustaining any injuries, correct?

21 A. Yeah. Like I said, I got punched in the eye. So whatever
22 injuries come from getting punched in the eye, maybe it was
23 swollen red, but it wasn't anything that's going to keep me out
24 of work or that I had to report to a hospital or anything for,
25 you know. Like I told you before, to me this was just a

D7NHHAW4

Gunsett - cross

1 run-of-the-mill every day type of thing when you run in a
2 correctional facility. I got hit, I responded, and that was
3 it. I didn't really think much of it.

4 Q. Can you turn to page 33 of your deposition.

5 A. Yes.

6 Q. Starting at line 4: "Did you sustain injuries?"

7 "A. You know what, I don't remember."

8 "OK."

9 A. I think I'm losing you.

10 Q. Page 33, line 4.

11 THE COURT: 33 is the box on the lower right.

12 THE WITNESS: And line 4.

13 THE COURT: Line 4.

14 THE WITNESS: I see that it says he is trying to
15 restrain him.

16 Q. Let me get you there. You are looking at Mazzella's.

17 A. I'm sorry.

18 Q. You want to look at your deposition testimony.

19 Starting at line 4: Did you sustain injuries, was the
20 question.

21 "A. You know what, I don't remember.

22 "Q. OK.

23 "A. I don't really remember."

24 Did I read that correctly?

25 A. Yes.

D7NHHAW4

Gunsett - cross

1 Q. Do you recall being asked those questions and giving those
2 answers?

3 A. Yeah.

4 Q. And after the assault -- strike that.

5 After the assault took place, you remained on duty
6 that day, right?

7 A. I believe so.

8 Q. Let's go back to your employee accident report. Box 14,
9 employee remained on duty.

10 A. Yes.

11 Q. Yes?

12 A. Yes.

13 Q. And if you look at box 25, services provided. First aid is
14 not checked, correct?

15 A. No.

16 Q. Medical treatment, not checked, right?

17 A. No.

18 Q. You claim that Mr. Hawks coldcocked you and sucker punched
19 you, right?

20 A. He absolutely did. Yes.

21 Q. Officer Gunsett, have you ever been accused of using
22 excessive force before?

23 MS. KIM: Objection.

24 THE COURT: Sustained.

25 Q. Have you ever been sued before for excessive force?

D7NHHAW4

Gunsett - cross

1 MS. KIM: Objection.

2 THE COURT: Sustained.

3 Q. And just so we're clear, it's your testimony that there
4 were only two strikes on Mr. Hawks that day, your punch and
5 your knee and no other strikes, right?

6 A. Yes.

7 MR. NOVICH: No further questions, Judge.

8 THE COURT: Counsel, any redirect?

9 MS. KIM: Thank you, your Honor.

10 REDIRECT EXAMINATION

11 BY MS. KIM:

12 Q. Officer Gunsett, you were asked about Mr. Hawks being
13 brought into this side room alone, right?

14 A. Yes.

15 Q. Can you explain to the jury why Mr. Hawks was brought into
16 that room, why he was the only inmate brought into that room at
17 that particular time?

18 A. Well, whether -- I don't remember that day why he was the
19 first one. It could have very well have been another inmate
20 that was --

21 THE COURT: Just tell us what you do remember.

22 THE WITNESS: Right.

23 A. It could have easily been another inmate that was brought
24 in there first. It could have been random. Me personally,
25 like I said, when we brought him in, I would be more apt to

D7NHHAW4

Gunsett - redirect

1 restrain the SHU inmate first because he could be -- he is in
2 SHU and he is obviously, it is a disciplinary type inmate or a
3 violent inmate or whatever the case may be. So me personally,
4 common sense wise, I would rather get him restrained first so
5 that you avoid any problems.

6 And as far as being alone, if he wasn't the first one
7 and it was another inmate that was the first one, he would have
8 been alone because we are not going to have five or six
9 unshackled inmates standing all around us as we are shackling
10 an inmate. You are going to shackle one all alone while the
11 other ones are in a secure bullpen. And once we get him
12 shackled, we would bring the next guy in to shackle him. That
13 is the reason for him being alone, for any inmate being alone
14 in that room being shackled. Because I am not going to have
15 five unrestrained convicts standing around me as we attempt to
16 shackle them.

17 Q. Thank you. Now, Mr. Novich asked you about specific
18 strikes on Mr. Hawks.

19 A. Yes.

20 Q. Other than the specific strikes that you had with Mr. Hawks
21 to his either face or body, there were a lot of holds and
22 grabbing to try to get him onto his stomach, right?

23 A. Yes. It was a violent struggle to get his hands behind his
24 back to be handcuffed.

25 Q. And it was a small room?

D7NHHAW4

Gunsett - redirect

1 A. Very small room, yes.

2 Q. And then at some point he tripped over the bench and fell
3 onto his back, right?

4 A. Yes.

5 Q. And there was a wall right behind that bench?

6 A. Yes. There is a wall directly, pretty much directly behind
7 that bench, yeah.

8 Q. There was a lot of tussling to try to get Mr. Hawks on his
9 stomach, right?

10 MR. NOVICH: Objection. Leading.

11 THE COURT: Sustained.

12 Q. Other than actual punching or kneeing of Mr. Hawks, the
13 officers involved had their hands on Mr. Hawks in other ways,
14 right?

15 A. Yeah. I mean the inmate was flailing all around, just, you
16 know, squirming, rolling, you know, thrashing about. So at
17 that time we're just trying to get him controlled so that we
18 can turn him over and get the handcuffs on him while he's
19 swinging and thrashing and kicking and, you know, you know,
20 going crazy for the most part.

21 THE COURT: Do you recall how many other officers were
22 there aside from you?

23 THE WITNESS: Honestly I don't. When they call a
24 response team -- I don't work at Fishkill. Certain officers
25 are assigned to a response team. So when they call a response,

D7NHHAW4

Gunsett - redirect

1 anybody who is a responder responds. So I mean there could
2 have been five, there could have been ten, there could have
3 been 15. I have no ideas how many officers.

4 THE COURT: Would you say there were at least three?

5 THE WITNESS: Oh, absolutely. Yeah, yeah, yeah.

6 MS. KIM: Thank you. I have nothing further.

7 THE COURT: Thanks very much.

8 (Witness excused)

9 THE COURT: Let's have the next witness.

10 MR. CLARK: The defense calls officer Eladio Cruz.

11 ELADIO E. CRUZ,

12 called as a witness by the Defendants,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CLARK:

16 Q. Good afternoon, officer Cruz.

17 A. Good afternoon.

18 Q. So where are you presently employed?

19 A. I'm employed at Green Haven Correctional Facility.

20 Q. Could you speak up a little bit into the microphone.

21 A. Yes. Is that better?

22 Q. Yes.

23 When were you born, officer Cruz?

24 A. When was I born?

25 Q. Yes.

D7NHHAW4

Cruz - direct

1 A. February 4, 1980.

2 Q. Where do you live?

3 A. I live in Highland, New York.

4 Q. Are you married?

5 A. I am married.

6 Q. Do you have a family?

7 A. Yes.

8 Q. So when did you begin working at DOCS?

9 A. I began working at DOCS in 2004.

10 Q. Before working at DOCS -- strike that.

11 Did you have any training to become a corrections
12 officer?

13 A. Yes, I did. I went to the training academy in Albany.

14 Q. Could you speak a little bit more into the microphone.

15 A. I went to the training academy in Albany.

16 Q. What type of training did you receive at the training
17 academy in Albany?

18 A. A lot of different training, from penal law, firearms
19 training, how to deal with inmates in a correctional facility,
20 use of force training. Like a lot of different training over
21 eight weeks.

22 Q. Can you tell us a little bit more about the use of training
23 research?

24 THE COURT: You mean use of force.

25 MR. CLARK: I'm sorry.

D7NHHAW4

Cruz - direct

1 Q. The use of force training you received at the academy.

2 A. Well, basically they teach you when to use force and how
3 much force to use, only when it is necessary, and to use a
4 reasonable amount of force to quell a situation. And when
5 inmates stop resisting to stop using force.

6 Q. And approximately when did you complete your training at
7 the academy?

8 A. That was probably around August of 2004.

9 Q. And could you please describe your career at DOCS since
10 that time until now.

11 A. Sure. After I completed the eight weeks, I was assigned to
12 work at Green Haven Correctional Facility as OJT. That is
13 on-the-job training. That is for, I believe it was two weeks
14 at the time. And then after that you are essentially thrown to
15 the wolves, just go to work and learn as you go.

16 I stayed as a resource officer. They put you in a
17 pool of officers that work in the facility, as if someone's not
18 at work or on vacation or they have someone out sick, you take
19 their place for that day. I'm sorry. I did that for about
20 four years. Then I took a bid working in Green Haven's mess
21 hall, which I worked on day shift. They make the meals for all
22 the inmates in the jail for breakfast and lunch. And I
23 supervise those inmates and I hand them out the utensils that
24 they use and things like that.

25 Q. As part of your responsibilities with the resource unit,

D7NHHAW4

Cruz - direct

1 did you ever have to transport inmates?

2 A. Yes, I did.

3 Q. And how often did you have to, ballpark, how often did you
4 have to transport inmates?

5 A. I did that a lot because I was like a local person that
6 lives close by the jail and I had done it a few times and the
7 other transport officers got to know me and sometimes they
8 would tell the chart sergeant that I was reliable. So the
9 sergeant would often assign me to do transport.

10 Q. Now let me direct your attention to the incident that
11 occurred on November 1, 2007.

12 A. OK.

13 Q. Were you working at Green Haven that day?

14 A. Yes, I was.

15 Q. And what shift were you on?

16 A. The 7 to 3, 7 a.m. to 3 p.m. shift.

17 Q. And what was your assignment that day?

18 A. I was assigned to the trip that was going to Fishkill
19 Correctional Facility.

20 Q. Now, when did you find out that you were going to be
21 transferring inmates to Fishkill?

22 A. When you are a resource officer, typically you would find
23 out the day before. They have like a bulletin board, like a
24 chalkboard, and they will write out the trips and the names of
25 the officers who are on it. So I would check on that board

D7NHHAW4

Cruz - direct

1 every day before I went home to see if I was on.

2 It also tells you what time you have to come in. You
3 could come in early in the morning or later in the morning. It
4 tells you what time to be there and where you are going and who
5 the other officers are. So I would check it every day. And
6 that day, the day before the trip, I knew I was going at 7:00
7 in the morning and I would report and I was going to Fishkill
8 Correctional Facility.

9 Q. Would it be correct to say that you didn't know that you
10 would be going to Fishkill for transportation more than 24
11 hours beforehand?

12 A. No, not more than 24 hours.

13 Q. And that is standard procedure?

14 A. Yes, that is standard procedure.

15 Q. Now, you previously heard testimony from the plaintiff
16 stating that you had transported him on August 25, 2007. Have
17 you ever seen Mr. Hawks before November 1, 2007?

18 A. No. Before the trip that I took to Fishkill Correctional
19 Facility on November 1st, I had never seen that inmate before.

20 Q. Before the incident in question, can you describe or did
21 you know -- was there anything about Mr. Hawks' demeanor that
22 you remember?

23 A. You mean before we left the facility? Could you repeat the
24 question?

25 Q. Before the actual use of force incident.

D7NHHAW4

Cruz - direct

1 MR. NOVICH: I am going to object.

2 THE COURT: Sustained.

3 Are you asking if he knew or encountered Mr. Hawks
4 before that day?

5 MR. CLARK: No, no. Let me rephrase.

6 THE COURT: Hold on a second. The answer to that
7 question is what? Before November 1st, did you ever know or
8 encounter Mr. Hawks?

9 THE WITNESS: No, your Honor, before that day I did
10 not know him or I had not encountered inmate Hawks.

11 Q. So were you transporting Mr. Hawks on November 1, 2007?

12 A. Yes.

13 Q. And how did you transport him to Fishkill Correctional
14 Facility?

15 A. By van.

16 Q. During that day did you see Mr. Hawks before the
17 altercation, the use of force incident?

18 A. Yes, I definitely did see inmate Hawks before the
19 altercation.

20 Q. Was there anything about his demeanor that you remember?

21 MR. NOVICH: Objection, your Honor. Foundation.

22 THE COURT: Sustained.

23 Q. Let's take our attention to the use of force incident,
24 specifically the time of the use of force incident on November
25 1st.

D7NHHAW4

Cruz - direct

1 When the altercation occurred -- did you see when the
2 altercation began?

3 A. No, I did not.

4 Q. So how did you know that there was an altercation
5 occurring?

6 A. Well, when they finished with -- we finished with all the
7 medical call outs the inmates had, we brought them all
8 downstairs to the bullpen. Myself and the other officer that
9 were on the trip stayed with the larger group of inmates by the
10 bullpen area while the other two officers were applying the
11 shackles to them, to keep our eye on them, because when we are
12 on these trips outside the facility, we always have to keep an
13 eye on the inmates to make sure that they are not passing
14 contraband or anything of that kind of nature. You never want
15 to lose sight of the inmates that we take.

16 So we were with them, keeping an eye on them while the
17 inmate Hawks was being shackled. I heard some commotion going
18 on, like wrestling kind of noises coming from the left, the
19 area where the inmate was being shackled. So I instructed the
20 other officer to wait and keeping his eye on the inmates that
21 were remaining while I went to see what was going on.

22 So I went over and I saw behind that bench, in between
23 the bench and the wall the inmate on his back and officers
24 Gunsett and Mazzella on either side of him and they seemed to
25 be struggling with him. So I came over to assist them. There

D7NHHAW4

Cruz - direct

1 is not much room in between the bench and the wall. So I did
2 what I could do, was I saw he was kicking his legs a lot and
3 trying to stand back up and stuff. So I grabbed both of his
4 legs to try to stop him from swinging them and trying to stand
5 up so that it would make it easier to roll him over onto his
6 stomach so that he could be placed in mechanical restraints or
7 handcuffs.

8 Q. During the altercation, did you ever see a cast on
9 Mr. Hawks' arm?

10 A. No, I did not.

11 Q. Did you ever see any piece of a cast on his wrist?

12 A. No, I did not.

13 Q. Also, would it be fair to say based on your testimony
14 that -- actually, strike that.

15 Again, when you arrived the incident was already
16 occurring, correct?

17 A. Right. When I came into that room, the altercation had
18 already begun and I came over to assist any way I could.

19 Q. So when you arrived, did you see any officers punch
20 Mr. Hawks?

21 A. I did not.

22 Q. Did you see any officers kick Mr. Hawks?

23 A. No, I did not.

24 THE COURT: When you got there, there were two
25 officers already there?

D7NHHAW4

Cruz - direct

1 THE WITNESS: Correct, your Honor.

2 THE COURT: That's it?

3 THE WITNESS: Only two, your Honor.

4 Q. Did anyone ever tell you to harm Mr. Hawks?

5 A. No, never.

6 Q. And after Mr. Hawks was subdued, what happened next?

7 A. After inmate Hawks was subdued, he was taken off the floor.
8 Responding officers came into the room from Fishkill and they
9 took control of the inmate, and myself and the other officers
10 that were involved were seen by medical back upstairs, I
11 believe, in the Fishkill Correctional Facility. They removed
12 us from the area and we were seen by the medical staff.

13 Q. Now, officer Cruz, did you ever punch Mr. Hawks?

14 A. No, I did not.

15 Q. Did you ever kick Mr. Hawks?

16 A. No, I did not.

17 Q. One more question. Before November 1, 2007, have you ever
18 met officer Corey Graveline?

19 A. No. That was the first time I met him.

20 MR. CLARK: Thank you. No further questions.

21 THE COURT: Counsel.

22 MR. NOVICH: Yes, Judge.

23 CROSS EXAMINATION

24 BY MR. NOVICH:

25 Q. Good afternoon, officer Cruz.

D7NHHAW4

Cruz - cross

1 A. Good afternoon.

2 Q. On November 1, 2007 you arrived to the scene of the assault
3 after the assault had already started, correct?

4 A. Correct.

5 Q. You did not see who threw the first punch, did you?

6 A. I did not.

7 Q. You didn't see how many times officer Gunsett punched
8 Mr. Hawks, did you?

9 A. I did not.

10 Q. You didn't see how many times officer Gunsett kneed or
11 kicked Mr. Hawks, did you?

12 MS. KIM: Objection.

13 THE COURT: Overruled.

14 A. I did not see any punches or kicks thrown at all.

15 Q. You don't know if defendant Mazzella hit, either punched or
16 kicked Mr. Hawks before you arrived, do you?

17 A. I didn't see anyone punch or kick inmate Hawks, no.

18 Q. That wasn't my question. My question is, you don't know if
19 officer Mazzella punched or kicked Mr. Hawks before you
20 arrived, do you?

21 A. Right. I answered no. No.

22 Q. Now Mr. Hawks, he didn't punch you, did he?

23 A. No, he did not.

24 Q. He didn't kick you, did he?

25 A. I was by his feet. So maybe not purposefully, but his foot

D7NHHAW4

Cruz - cross

1 could have hit part of my body while I was grabbing them. I
2 mean -- but I don't know if his intent was to kick me or not.

3 Q. Could have been just trying to defend himself, right?

4 A. I don't know.

5 Q. You didn't complete an employee accident report for
6 yourself that day, did you?

7 A. I don't remember.

8 Q. You don't remember sustaining any injuries, do you?

9 A. No.

10 Q. And you remained on duty at work after the assault,
11 correct?

12 A. Yes, I did.

13 MR. NOVICH: No further questions, your Honor.

14 THE COURT: Thanks a lot.

15 Anything else?

16 MR. CLARK: No, your Honor.

17 THE COURT: Thanks very much.

18 THE WITNESS: Thank you.

19 (Witness excused)

20 THE COURT: Do we have any more witnesses?

21 MR. CLARK: Yes, your Honor. One more.

22 Officer Corey Graveline.

23 THE COURT: OK.

D7NHHAW4

Cruz - cross

1 COREY GRAVELINE,

2 called as a witness by the Defendants,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. CLARK:

6 Q. Good afternoon, officer Graveline.

7 A. Good afternoon.

8 Q. So where are you presently employed, officer Graveline?

9 A. Willard Drug Treatment Campus.

10 Q. What is that a part of?

11 A. What is it a part of?

12 Q. Yes.

13 A. DOCS.

14 Q. How did you decide to become an employee of DOCS?

15 A. To be honest with you, I really had no intentions of
16 becoming an employee of DOCS. One week my mother signed me up
17 and said you have a test to take and I went and took it.

18 Q. So when did you begin working at DOCS?

19 A. '06. January '06.

20 Q. Before you began working at DOCS, did you have any
21 training?

22 A. Before I began working at DOCS, did I have what?

23 Q. Any training.

24 THE COURT: What did you do before DOCS?

25 THE WITNESS: I did a number of things. I mean, pizza

D7NHHAW4

Graveline - direct

1 making, garage doors.

2 Q. I'm sorry. Once you started working with DOCS, did you
3 receive any training as a corrections officer?

4 A. Yes, in the academy.

5 Q. What type of training did you receive?

6 A. Firearms, legals, inmate supervision, use of force.

7 Q. We've heard this from some of the other defendants, but
8 could you please tell us what that use of force training
9 entailed.

10 A. Basically when you are using force use necessary force to
11 get the inmate to comply, nothing more than that, to prevent
12 like assault on staff, destruction of state property.

13 Basically the same thing everybody else said.

14 Q. When did you graduate from the academy?

15 A. I think it was March '06.

16 Q. Once you graduated, what was -- how has your DOCS career
17 progressed? What things did you do since then?

18 A. Repeat the question.

19 Q. Once you finished at the academy, what units and what work
20 did you do at DOCS?

21 A. When I was at Fishkill, I had a bid in the RMU. I had a
22 relief bid there. So different days I had different
23 assignments. Some days I would be running the control booth on
24 the main floor, which opens the doors so people can enter that
25 building and also controls the bull people when inmates come in

D7NHHAW4

Graveline - direct

1 for sick call. I had a bid as the sick hall rover, which is
2 basically a rover in that building. In the morning we bring
3 inmates for sick calls or calls for doctors on the first floor.
4 I had half the building. I got them to their appointments, got
5 them back, sent them back. And I had a bid in the infirmary,
6 which is on the third floor.

7 Q. Where were you working on November 1, 2007?

8 A. I was a sick hall rover.

9 THE COURT: At Fishkill?

10 THE WITNESS: At Fishkill.

11 Q. Let me direct your attention to this specific incident on
12 November 1, 2007, the use of force incident. Were you working
13 this day?

14 A. Yes, I was.

15 Q. And what shift were you working?

16 A. I was 6:30 to 2:30.

17 Q. 6:30 to 2:30 a.m.?

18 A. 6:30 in the morning to 2:30 p.m.

19 Q. Now, where were you when the use of force altercation
20 began?

21 A. I was actually still upstairs. It was around lunchtime. I
22 was coming downstairs, where I normally eat lunch with the guy
23 that ran the bubble downstairs. I went down the elevator. I
24 got off the elevator and I was headed to the bubble when I
25 heard the commotion. I ran over to where it was and I seen a

D7NHHAW4

Graveline - direct

1 struggle on the floor behind that bench. I couldn't tell you
2 the officers there, but there were a couple of them. And
3 basically what I did is I just went over and assisted to see
4 what I could do, you know. It was a tight area.

5 When I got over there, the inmate was struggling
6 still. I mean we couldn't get him on his stomach. So once we
7 got him rolled over on his stomach, I applied mechanical
8 restraints or handcuffs. Once they were applied, we got the
9 inmate up and we got him in the corner and that's when the
10 other responding units and the sergeant came.

11 THE COURT: That is when what?

12 THE WITNESS: One of the other responding units and
13 the sergeant came.

14 THE COURT: I see.

15 So when you got there, do you know how many officers
16 were already there?

17 THE WITNESS: I do not. I know there were a few of
18 them, but I couldn't tell you the number. I was actually the
19 first Fishkill officer there.

20 Q. Now during the incident, do you remember there being a cast
21 on Mr. Hawks' arm?

22 A. No, I do not.

23 Q. Do you remember there being any type of bandaging on his
24 arm?

25 A. No, I do not.

D7NHHAW4

Graveline - direct

1 Q. So when there is an incident such as -- when there is a use
2 of force incident, is there a particular code that is called?

3 A. Yes. At Fishkill it is called code 10, and that's
4 basically just an emergency response code that comes over the
5 radios whenever there is any trouble in the building, a fight,
6 anything like that. They would pull their pin on their radio
7 and there are some people who would announce that all the
8 responder units to report.

9 Q. So to be clear, were you responding to a code 10?

10 A. No, I was not, because it had not been called at that
11 point. It was called after, after I had already gotten there.

12 Q. So before November 1st, did you know any of the other
13 defendants in this case?

14 A. No. I had never seen them before.

15 Q. So you didn't know officer Gunsett?

16 A. No, I did not.

17 Q. You didn't know officer Mazzella?

18 A. No, I did not.

19 Q. You didn't know officer Cruz?

20 A. No, I did not.

21 Q. Did you have any contact with them after this incident?

22 A. I haven't spoken or seen them since the incident prior to,
23 I believe it was either Monday or Sunday, when we just came out
24 to New York.

25 Q. Now, when you arrived on the scene, did you see anybody

D7NHHAW4

Graveline - direct

1 punch Mr. Hawks?

2 A. No, I did not.

3 Q. Did you see anybody kick Mr. Hawks?

4 A. No, I did not.

5 Q. Prior to November 1, 2007, have you ever even met Mr. Hawks
6 himself?

7 A. I've never seen him before the incident.

8 MR. CLARK: Thank you. No further questions.

9 MS. KIM: Your Honor, may we have just one minute?

10 THE COURT: Sure.

11 (Pause)

12 Q. Officer Graveline, do you know which sergeant responded to
13 this incident?

14 A. The first sergeant who responded to the incident was
15 sergeant Kennedy, who was actually the building sergeant there.

16 Q. Do you know if she is a female sergeant that we heard about
17 earlier?

18 A. She is the female sergeant, yes. She was the bid sergeant
19 in that building.

20 Q. I would like to add as Exhibit 1 -- I'm sorry.

21 I would actually like to ask you to look at the binder
22 at Defendants' Exhibit 1.

23 THE COURT: Me or him?

24 MR. CLARK: I'm sorry. Officer Graveline.

25 A. Which one is Exhibit 1?

D7NHHAW4

Graveline - direct

1 THE COURT: I think, counsel, you probably want to
2 show him.

3 MS. KIM: May I, Judge, show him?

4 THE COURT: Yes.

5 Q. Do you have the page?

6 A. Yes, I do.

7 Q. To your knowledge, is this the to/from that sergeant
8 Kennedy wrote?

9 A. Yes, it is. It appears to be.

10 MR. CLARK: No further questions.

11 THE COURT: Are you offering this into evidence?

12 MS. KIM: It is part of Defendants' Exhibit 1.

13 THE COURT: So it is already in.

14 MS. KIM: It is already in.

15 THE COURT: Thanks. Counsel.

16 CROSS EXAMINATION

17 BY MR. NOVICH:

18 Q. Good afternoon, officer Graveline, is it?

19 A. Yes. Good afternoon.

20 Q. Now, on November 1, 2007 you arrived at the scene, if I
21 understand the testimony correct, after the assault had already
22 occurred, right?

23 A. Yes.

24 Q. So you did not see who threw the first punch, did you?

25 A. No, I did not.

D7NHHAW4

Graveline - cross

1 Q. And you didn't complete an accident report that day for
2 yourself, did you?

3 A. No, not that I'm aware of, no.

4 Q. You didn't sustain any injuries, correct?

5 A. No.

6 Q. Is that a yes?

7 A. That is a yes, I did not sustain any.

8 Q. And you remained on duty that day after the assault, right?

9 A. Yes, I did.

10 Q. Now, at the time you were a Fishkill corrections officer?

11 A. Yes, I was.

12 Q. And this incident happened at Fishkill, right?

13 A. Yes, it did, in the RMU.

14 Q. In the RMU, in this particular room. Does this room have a
15 name?

16 A. No, not that I'm aware of.

17 Q. It's in the basement area, right?

18 A. Yes, it is.

19 Q. And in this area of the basement, this is where inmates are
20 transported and are dropped off to go seek medical attention,
21 right?

22 A. Yes, it is.

23 Q. And we've seen some pictures, all these different places
24 where inmates are held. Right?

25 A. Yes.

D7NHHAW4

Graveline - cross

1 Q. So this is an area where guards and inmates regularly come
2 in contact with each other, right?

3 A. It would only be the guards from the transporting
4 facilities, and the only other guard down there would be the
5 guy running the bubble, which is a Fishkill officer, and the
6 guard that is at the dialysis unit there.

7 Q. But there are guards and inmates in this area regularly on
8 a daily basis, is that right?

9 A. Usually. Normally Monday through Friday, yes.

10 Q. Is it your testimony that there are no cameras in that area
11 at all?

12 A. None that I'm aware of.

13 Q. Do you know why that's the case?

14 A. No, I don't.

15 Q. If you know.

16 Now, looking at Defendants' Exhibit 2. Sorry. 1.
17 Your report. Let me help you. Let me just direct you there.

18 THE COURT: Where would this be in the book?

19 MR. NOVICH: Judge, this is part of Defendants'
20 Exhibit 1. It is officer Graveline's report.

21 THE COURT: Is it toward the end?

22 MR. NOVICH: Yes, Judge. It is actually the last
23 page.

24 THE COURT: I've got it.

25 Q. So officer Graveline, this is your report that you prepared

D7NHHAW4

Graveline - cross

1 that day, correct?

2 A. Yes, it is.

3 MR. NOVICH: Your Honor, permission to publish it to
4 the jury?

5 THE COURT: Sure.

6 Q. You prepared this report on November 1, 2007, right?

7 A. Yes, I did.

8 Q. You wrote that you responded to a code 10 in the RMU
9 basement, right?

10 A. Yes, I did.

11 Q. And you observed correctional officers Gunsett and Mazzella
12 had inmate Hawks, and then I guess that is his DIN number, is
13 that right?

14 A. Yes.

15 Q. Subdued on the floor when you arrived?

16 A. Yes.

17 Q. So when you arrive, they already had him on the floor
18 subdued?

19 A. He was -- they were still struggling with him.

20 Q. Didn't you say, use the word subdued?

21 A. I did, but I mean I might have been wrong, but there was
22 definitely some struggling going on when I got there.

23 Q. In your report did you write that he was still struggling
24 or did you say when you arrived you observed that Gunsett and
25 Mazzella had him subdued?

D7NHHAW4

Graveline - cross

1 A. I said subdued.

2 Q. You testified that, I believe -- correct me if I'm wrong --
3 that sergeant Kennedy came to the scene eventually?

4 A. Yes. After we already had him on his feet.

5 Q. And sergeant Kennedy, she is a Fishkill sergeant, right?

6 A. Yes. She was at the time.

7 Q. She was at the time.

8 A. Yes.

9 Q. She wasn't a Green Haven corrections officer, right?

10 A. Not that I'm aware of, no.

11 Q. She wasn't a sergeant or a corrections officer in the
12 facility where Mr. Hawks was an inmate, right?

13 A. No, not that I know.

14 Q. Sergeant Kennedy, were you there when she told Mr. Hawks to
15 stand still on the wall?

16 A. Yes, I was.

17 Q. And he complied with sergeant Kennedy's command, didn't he?

18 A. I believe it was her second order, but yes, he did.

19 MR. NOVICH: No further questions, your Honor.

20 THE COURT: Thank you. Thanks very much.

21 MR. CLARK: Your Honor, one last question.

22 REDIRECT EXAMINATION

23 BY MR. CLARK:

24 Q. Officer Graveline, to your knowledge are there any video
25 surveillance cameras at Fishkill?

D7NHHAW4

Graveline - redirect

1 A. Video surveillance, as in taped?

2 Q. Yes.

3 A. No.

4 MR. CLARK: Thank you.

5 THE COURT: Thanks very much.

6 Any further witnesses?

7 MS. KIM: The defense rests.

8 THE COURT: So we will excuse Mr. Graveline.

9 (Witness excused)

10 THE COURT: Now the defense has rested, which means
11 that the case is over in terms of presenting evidence here in
12 court. So it is a quarter to 4. I think I am going to excuse
13 you for today and ask you to come back tomorrow at 10 a.m., at
14 which point we will have closing arguments and jury
15 instructions and then you will begin your deliberations. But
16 before I let you go, I just want to go over my instructions for
17 how to conduct yourself between now and then. These are
18 instructions I gave you yesterday as well.

19 So first, do not talk to each other about the case or
20 about anyone who has anything to do with it until the end of
21 the case when you go to the jury room to decide, deliberate on
22 your verdict. That means not to have discussions until after
23 the charges and you are in the jury room altogether.

24 Second, do not talk with anyone else about the case or
25 about anyone who had anything to do with it until the trial has

D7NHHAW4

Graveline - redirect

1 ended and you have been discharged as jurors. Anyone else
2 includes members of your family and your friends, and the
3 vehicle for talking is not just face to face but, you remember,
4 phone, no internet, no Facebook, no Twitter, no social media.
5 You may tell people that you are a juror in a case, but please
6 don't tell them anything about the case until after you have
7 been discharged by me.

8 Third, don't let anyone talk to you about the case or
9 about anyone who has anything to do with it. If someone were
10 to try to talk to you about the case, please report that to
11 Christine or me immediately.

12 Fourth, do not read any news or internet stories or
13 articles about the case or listen to any radio or TV reports
14 about the case, assuming there were any, or about anyone who
15 has anything to do with it.

16 And fifth, please don't do any research or any
17 investigation about the case on your own.

18 You remember I closed yesterday by saying that the
19 parties are entitled to have you personally render a verdict in
20 this case based on your independent evaluation of the evidence
21 presented here in the courtroom. So obviously speaking to
22 others about the case, including family members, before you
23 deliberate or exposing yourself to evidence outside the
24 courtroom could compromise your jury service and fairness to
25 the parties.

D7NHHAW4

Graveline - redirect

1 We have been making and have made great progress in
2 this case. As I say, if you would be ready to be in the
3 courtroom at 10 -- so come a little bit before 10 tomorrow --
4 things should move along nicely.

5 If you leave everything on your chair, Christine will
6 take care of, safeguard it until tomorrow.

7 Thanks so much.

8 (Jury excused)

9 (Continued on next page)

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D7NHHAW4

Graveline - redirect

1 (Jury not present)

2 THE COURT: We have a few housekeeping matters. So
3 first, I am happy to hear if anyone wants to make a motion,
4 hear about that. The principal housekeeping matter that I want
5 you to do in the next 15, 20 minutes or so is to agree with
6 each other as to what the exhibits are and make sure they are
7 properly numbered or ordered, and tomorrow which exhibits we
8 should send into the jury room.

9 Yes, sir.

10 MR. NOVICH: One notebook, Judge, is that good?

11 THE COURT: You have multiple notebooks, right? I
12 think we have a bunch of them. I just assume have a bunch.

13 MR. NOVICH: I think I provided the court with three.
14 One for your Honor, one for your clerk, and one for the
15 witness.

16 THE COURT: Two things. We will see what we've got
17 here. I would rather have a couple more. Ideally we would
18 have one for everybody, but at least four I'd say. One for two
19 people would be great. We are happy to give you back that
20 book. The one for the witnesses, for example. And if I have
21 one, I am happy to give you mine as well.

22 Now be careful in putting the books together to make
23 sure that things that we are not including as evidence are not
24 included in the books and just to make sure that everything
25 that was supposed to be in evidence is in the books.

D7NHHAW4

Graveline - redirect

1 MS. KIM: Your Honor, can we come up to side bar.
2 They are housekeeping matters. I just don't want to say them
3 in open court if you don't mind.

4 THE COURT: Is that all right with you?

5 MR. NOVICH: Sure.

6 (Continued on next page)

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D7NHHAW4

Graveline - redirect

1 (At the side bar)

2 MS. KIM: I'm sorry. Officer Mazzella's wife was
3 rushed to the hospital this morning. She is admitted. She has
4 a terrible -- she is admitted. It could be very serious. If
5 your Honor allows perhaps he may not be here tomorrow. Is that
6 OK?

7 MR. NOVICH: No problem.

8 THE COURT: It is not a problem.

9 MS. KIM: We will explain it to the jury why he is not
10 here?

11 THE COURT: I don't think we need to explain it.

12 MR. NOVICH: I don't think we need to explain it,
13 Judge.

14 MS. KIM: I don't want the jury to question why all of
15 the sudden he is not here. He has better things to do than
16 this trial.

17 THE COURT: No, no.

18 MR. NOVICH: I have no problem if it is official
19 business or something like that.

20 THE COURT: If you want me to say I excused officer
21 Mazzella for today's proceeding. That is it.

22 MS. KIM: Also, your Honor, I have a two and a half
23 year old and he gets very upset if I leave before he wakes up.
24 Can we start at 9?

25 THE COURT: No, we can't.

D7NHHAW4

Graveline - redirect

1 MS. KIM: Because I don't think it is going to be very
2 long.

3 THE COURT: When we do the jury instructions, just so
4 you know why we can't, so if there are changes, and there
5 invariably are so changes, and we have to redo it and make
6 eight copies and look through each copy to make sure that we
7 haven't made any mistakes, etc. I am not being difficult.

8 MS. KIM: I will wake him up.

9 THE COURT: Bring him.

10 MR. NOVICH: You want us here 8:30?

11 THE COURT: Yes. 8:30.

12 MR. NOVICH: We are not going to actually start the
13 trial until 10.

14 THE COURT: 8:30 we will do the charge conference.
15 Here is what we will do. We will go right through the charges
16 and we will flip pages until somebody has a comment and then we
17 will talk about them. We will do the same thing for the
18 verdict sheet and then we will talk about them. We will make
19 the changes and then you will probably want to prep a little
20 bit. I promise you that will probably eat up an hour, more or
21 less. So then it is 9:30 already. I said 10 to them just to
22 give us a little window so that they wouldn't be sitting
23 around.

24 MR. NOVICH: Judge, maybe I am getting ahead of
25 myself. Closing. Mary is going to go first. Then I am going

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Graveline - redirect

1 to go.

2 THE COURT: Let's figure. How much time do you think
3 you will need for the closing?

4 MS. KIM: Probably --

5 THE COURT: Less is always more, right?

6 MS. KIM: Probably half an hour, and I think I am
7 going to waive, I am most likely waiving any rebuttal. So half
8 an hour.

9 THE COURT: How much time do you think you need?

10 MR. NOVICH: Tops, half an hour.

11 THE COURT: Yes. I am not going to cut you off, but
12 it is a simple case. It is a question of who people believe,
13 right? Credibility mostly, I would say.

14 If we start at 10, that takes us to 11. Then I will
15 finish before -- it is about 30 pages or something. That is an
16 hour. 12-ish. We will order lunch for them and they will have
17 the case around 12, 12:30 would be my guess.

18 MR. NOVICH: So Mr. Hawks should be brought up when?

19 THE COURT: He is entitled to be here.

20 MR. NOVICH: The whole thing.

21 THE COURT: As much as he wants. Does he want to be
22 in the charge conference?

23 MR. NOVICH: I will ask him, but I don't think so.
24 But I will ask him.

25 THE COURT: In that case 10.

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Graveline - redirect

1 MR. NOVICH: OK.

2 THE COURT: We certainly wouldn't do anything without
3 him. 9:30 if there is any discussion of anything.

4 MR. NOVICH: Right.

5 THE COURT: So 9:30.

6 MR. NOVICH: Thanks, Judge.

7 THE COURT: Do you want to make your motions?

8 MS. KIM: Yes.

9 THE COURT: OK.

10 (Continued on next page)

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Graveline - redirect

1 (In open court; jury not present)

2 MS. KIM: Your Honor, at this time the defense moves
3 pursuant to Rule 50 for a directed verdict. Specifically,
4 Mr. Hawks has not proven his burden in this case of an
5 excessive force on the part of the defendants. Also, based on
6 his own admissions it is clear that the defendants should be
7 granted qualified immunity in taking the actions that they did.
8 Mr. Hawks admits to being combative, of having at least bit
9 officer Mazzella. He also states in his complaint that he took
10 other physical actions against the officers.

11 There is no clear-cut law that states that officers
12 cannot use any force against an inmate. In fact, I would argue
13 that the law allows these officers to use reasonable force as
14 necessary to protect themselves, other inmates, and other
15 officers, and that is what they did here. It was reasonable
16 force. Mr. Hawks was combative, physically assaulting them,
17 and they used the minimal and reasonable force necessary to
18 subdue and restrain the inmate.

19 THE COURT: Thanks. Hold on for a second.

20 (Pause)

21 THE COURT: Yes.

22 MR. NOVICH: Judge, the standard under Rule 50 is
23 whether, giving plaintiff all the benefits of the doubt,
24 whether a reasonable jury could find in his favor, and I think
25 there is more than enough evidence in the record that a

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Graveline - redirect

1 reasonable jury could find in his favor in this case.

2 I believe if you draw all reasonable inferences in
3 favor of Mr. Hawks, all of the mandatory elements for an
4 excessive force claim under Section 1983 have been met. Some
5 of them aren't even disputed. The first being were the
6 defendants acting under color of state law. Clearly they were.
7 They were acting as correction officers, prison guards at Green
8 Haven at the time of the altercation. That element is
9 satisfied. It is not even disputed.

10 Second element, whether there was a constitutional
11 violation. The Eighth Amendment protects against cruel and
12 unusual punishment, protects against excessive force for
13 prisoners, and I believe the test is was it sadistic, was it
14 malicious. I think there is more than enough evidence in the
15 record to support a reasonable jury concluding and inferring
16 that it was.

17 There was all sorts of testimony by Mr. Hawks that he
18 was noncombative, that he was complying with officer Gunsett's
19 commands, and that officer Gunsett hit him. I also think a
20 reasonable jury could infer there was plenty of motivation
21 here. We heard about the August 25th incident and what
22 happened. I think a reasonable jury can conclude that the act
23 was intentional and was deliberate and that the defendants
24 were, at least some of them, were lying in wait for the right
25 opportunity to carry that out.

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1 MR. NOVICH: In terms of proximate cause and injuries
2 and damages, they are all there. I don't think there is any
3 dispute that he suffered damages, that he has got injuries.
4 The case law is pretty clear. I saw it in your Honor's
5 proposed jury instructions about under Section 1983 excessive
6 force claim, the injuries don't even have to be significant.
7 Here, I would argue that they are significant. He has the
8 abrasions, bruising, swelling and all sorts of injuries all
9 over his body.

10 For all those reasons I think the Rule 50 motion
11 should be denied. I think the jury should be given an
12 opportunity to decide this case. I think it is classic "he
13 said, they said" controversy and the jury should sort this out.

14 THE COURT: Hold on one second.

15 (Pause)

16 THE COURT: I think I said this earlier when we had an
17 abbreviated discussion on the close of the plaintiff's case
18 that my options are threefold: One is to grant the motion, one
19 is to deny it, and another is to reserve judgment and let the
20 case go to the jury. That is exactly what I am going to do,
21 without ruling on the motion, I am going to reserve decision
22 and place the case in the hands of the jury, which we'll do
23 tomorrow. Thank you very much.

24 MS. KIM: Thank you, your Honor.

25 THE COURT: Let's get the exhibit thing straightened

D7N6HAW5

1 out.

2 Incidentally what I was obliquely referring to during
3 the trial, I don't know if this is intentional or unintentional
4 or inadvertant, but the photos are not the same with respect to
5 plaintiff and defendant. So I saw one anyway that appeared in
6 plaintiff's exhibits but didn't appear in defendants'. I don't
7 know if that was an oversight.

8 MR. NOVICH: There were some last minute photo
9 swapping.

10 THE COURT: That is why I want you to make sure both
11 sides get it all straightened out.

12 MR. NOVICH: I am going to take the witness's notebook
13 and I need Jackie's notebook or your Honor's notebook.

14 (Adjourned to July 24, 2013 at 9:30 a.m.)
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